THE EVIL THAT MEN DO

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VOLUME ONE

By the Same Author

TWELVE SCOTS TRIALS
THE RIDDLE OF THE RUTHVENS
GLENGARRY'S WAY
THE FATAL COUNTESS
THE REBEL EARL
MALICE DOMESTIC

In the Notable British Trials

DR. PRITCHARD
DEACON BRODIE
CAPTAIN PORTEOUS
OSCAR SLATER
JESSIE M'LACHLAN
MARY BLANDY
BURKE AND HARE
KATHARINE NAIRN
JOHN DONALD MERRETT

THE EVIL THAT MEN DO

BY

WILLIAM ROUGHEAD

COMPILED WITH AN INTRODUCTION BY

EDMUND PEARSON

VOLUME I

PUBLISHED FOR THE
CRIME CLUB, INC., BY
DOUBLEDAY, DORAN
& COMPANY, INC., GAR-
DEN CITY, N. Y., 1929

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PRINTED IN THE UNITED STATES AT
THE COUNTRY LIFE PRESS
GARDEN CITY, N. Y.

FIRST EDITION

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INTRODUCTION

MR. ROUGHEAD *took occasion, recently, to make one or two remarks about his method of writing books on crime. Referring to the word "Criminologist," often applied to him, he said, with emphasis:*

"I am not a Criminologist!"

Then he added:

"A Criminologist, if I rightly understand the term, is a man of science, expert in unlawful and punishable acts, whose concern is with such grave matters as the mysterious springs and mechanism of wrong-doing, whether in individuals or in society; one skilled in Behaviourism and Penology, who faces psychologic problems and formulates profound theories connected with the Philosophy of Crime.

"Mine is a humbler rôle, and my talent is quite destitute of capitals. I am but a teller of tales, though it happens that the stories which I have to tell are true and their circumstances are sometimes regrettably bloody."

He further remarked that he had been rebuked by an American critic for having written a "leisurely book

with no thesis to offer, little psychologizing, and with no intent but to present accounts of actual crimes and roguery"—with doing, in short, precisely what he set out to do.

Who the critic may have been, I do not know, but I have more than once heard criticism from his school. In the days of our great-grandfathers there was one method of writing about crime: the heavily didactic. Unless you loaded your essay, at the beginning and at the end, with many solemn warnings that murder, highway robbery, and piracy were all in the nature of grave misconduct, you could hope neither for a publisher nor a reader.

This style has been abandoned, and the writer either produces a narrative in the manner of Mr. Roughead; or he tries to prove a thesis and engage in a little "psychologizing." We need not deny an author's right to either method. My tastes make me prefer the former. As between the Englishman, who, required to write an article on the hippopotamus, went to Africa and studied the animal itself; and the Continental scholar who locked himself in his library and evolved a hippopotamus out of his inner consciousness, I am so conservative as to prefer the Englishman.

The Continental scholar led out a fascinating beast, but it looks very like a Jabberwock. I recognize his

creator's ability as a romancer, but this will not satisfy his admirers. They insist that he is a scientist.

Not all of the followers of Mr. Lytton Strachey in England, and of Mr. Gamaliel Bradford in America, seem to notice that their masters make reasonably sure of the facts before they begin their psychologizing. The scholarly research, the skilful selection of material and the clear narrative style of Mr. Roughead's essay on Burke and Hare[1] *give it, I think, the rank of a masterpiece. If it had been written to establish a thesis, or to allow the writer to exhibit his powers as an amateur psychologist, it might have been more pleasing to those who always look for political or sociological propaganda; it might have seemed more learned to readers who believe that an obscure style indicates deep thought. But it would not have told so much of the truth about Burke and Hare.*

Confused as must be the ideas of all of us about that extraordinary girl, Constance Kent, I submit that we may know far more about her actions, and exactly as much about her mental processes and emotions from Mr. Roughead's account (*in* The Rebel Earl) *as from a writer who prefers to record what he thinks that Constance thought.*

Those who are inclined to denounce everything done

[1]Notable British Trials Series.

by our ancestors, but are not especially careful to find out what our ancestors really did, are fond of caustic references to the "Salem witch-burners." Now, there is a parallel between the bigotry of the persecutors of the witches and the bigotry of the superficial psychologists, the hasty and half-baked converts to Freudianism, who have been so eloquent for a few years past.

The lawyers and clergy of 1692 beat down opposition and confounded the skeptics by telling them that if they did not believe in trying an old woman for witchcraft they were blasphemers of the Word of God. A class of writers, to-day, try to instil fear—the fear of derision—by crying out that such-a-one is a reactionary: he does not accept modern psychology. Yet the psychology which such-a-one has questioned may not be the cautious statement of the genuine scholar, but some utterance of one of the half-baked, one of those (in the words of Dr. Abraham Myerson) who are "seeking the new sensation, and avidly swallowing the erotic phases of psycho-analysis."

The bigots of 1692 sought to frighten the doubter with the flames of Hell; the propagandist of to-day knows how potent is the terror of ridicule, and how many writers will shudder if someone calls them Puritanical, Victorian, or reactionary. Both argue by calling names, and one of the charms of the new psychology is the number of novel and abusive epithets which it affords.

Consider, for example, the manner in which some writers on criminology glibly call everyone who does not agree with them a "sadist." When the community felt a natural distaste for the murderer and child-torturer, Hickman, and desired that, at least, justice should not, in his case, be derided and mocked, some writers described the whole State as indulging in "an orgy of sadism."

Following the name of the author, on the title-page of some of Mr. Roughead's earlier books, are the words: "Writer to the Signet." The phrase, a little mysterious to us in America, designates a class of lawyers in Edinburgh who enjoy "special privileges." What the privileges are, I do not know, but I suppose that Mr. Roughead enjoyed them, while he practised as a "writer," or solicitor, from 1893 to 1913. Since his retirement from the legal profession, I imagine that he has been content with the privileges of playing his national game of golf, and deriving no little enjoyment from an international football match—especially when, in the last year or two, one of his sons was playing for Scotland.

Other privileges which came to him, however, from his work as a writer in the literary rather than the legal sense were the friendship and esteem of Henry James

and Joseph Conrad (who do not seem to have been troubled by his "little psychologizing") and a constantly growing audience in Great Britain and America.

An American author, writing about a similar subject, must envy Roughead the convenience and compactness of the tidy Scottish kingdom. The accessibility of the records, the nearness of the events themselves, are illustrated by the fact that from the trial described in "The Arran Murder," in the pages which follow, and even before that, it has been possible for Mr. Roughead to attend the High Court during important trials, and afterwards to consult the officials who were concerned. As if this were not enough, it happened that, a year or more ago, a strange case of what appeared to be murder took place in his own decorous neighbourhood. His history of the proceedings which followed has been published this year under the name of the accused youth, John Donald Merrett.[2]

Such luck is exasperating to the rest of us. My irritation may be explained when I say that in my search last year for the records of a murder I found that the only known copy of the minutes of the trial had been given to the brother of the convict. And as this convict had the extremely rare experience, for an American murderer, of actually being executed for his crime, I

[2]Notable British Trials.

was enjoined, by sentiments of delicacy, from asking to see the report.

Books about real cases of murder are deplored by some folk on the grounds that to read about crime provokes a desire to commit crime. To other persons such books are unwelcome, unless the author invariably takes the side of the accused person and argues the innocence of all slayers from the days of Cain to those of Crippen. If one's political philosophy teaches not that we have policemen because we have evil-doers, but that we have evil-doers because we have policemen; and, furthermore, that in all conflicts between the individual and the State the individual is always right—then, naturally, any investigation of the actualities of crime is very disturbing. The set formula of the novelist and playwright, that the prisoner-at-the-bar is a spotless lamb, and that all officers of the law are ravening wolves, gives far more comfort than an attendance at court, or any study of the facts.

It is not unknown for a writer about real crimes to be described as "blood-thirsty," unless he applauds all acquittals and denounces all convictions. I fancy that Mr. Roughead, like most honest investigators, declines to be disturbed by the theory, which finds some acceptance, both in England and America, that a considerable number of men, every year, die on the gallows or in the

electric chair, innocent victims to judicial fury. It is, therefore, the more pleasing to mention something which happened in one of the few genuine and notable cases in our time, in which an innocent man suffered unjust and severe punishment, and nearly paid the extreme penalty of the law.

This was in the matter of Oscar Slater. After he had written an impartial history of the case, Mr. Roughead was able to play an important part in securing justice—for the very reason that he had viewed the trial judicially and not hysterically, and was not known as an habitual agitator on the behalf of every accused murderer. In 1927 a letter to me from Roughead says:

"I am very busy just now behind the scenes of the Slater show. Did I tell you that he walked into my room one afternoon? An amazing experience, when I remember the circumstances in which I last saw him in 1909!"

The event, in 1909, which he had witnessed, was Slater's condemnation to death for the murder of Miss Gilchrist. The sentence was commuted to imprisonment, and the unfortunate man served a long term. Public opinion was aroused and kept interested through the influence and ability of Sir Arthur Conan Doyle, but when the official proceedings began, the legal knowledge of Mr. Roughead, and his acquaintance with the case, as its historian, were put at the disposal of the convict

and of the Crown. Ministers of State consulted him, and at the hearing in 1928, which resulted in a reversal of the conviction, he testified for the prisoner.

These fourteen essays are selected from two of Mr. Roughead's books, now out of print. Four of the essays, "The Pack of the Traveling Merchant," "Antique Smith", "Mackcoull and the Begbie Mystery," and "The Law and Mrs. Yelverton" are from The Riddle of the Ruthvens (*1919*) *while the others are from* Twelve Scots Trials (*1913*). *Unfortunately, the restrictions of space made it necessary to omit the historical mystery described in the title-essay in* The Riddle of the Ruthvens, *and a few others.*

Even with these omissions, the two volumes contain some of the best work of the foremost writer in this field. Three or four of these essays are favourites of mine and I am glad that the publishers have decided to perpetuate such choice tales as that of the Travelling Merchant, and its appropriate setting; Sergeant Davies, with its historical flavour; the strange love affairs of Christina Gilmour—who has been too much eclipsed by her follower, Madeleine Smith; the grim, ironic humour of "The Dunecht Mystery"; and the savage story of "The Arran Murder."

EDMUND PEARSON.

New York, 1929.

THE PACK OF THE TRAVELLING MERCHANT

Perhaps nothing, not even a ghost, is so staggering to the powers of belief as a well-authenticated dream which strikes the bull's eye of facts not known to the dreamer nor capable of being guessed by him.

—"THE BOOK OF DREAMS AND GHOSTS"

AMONG THE INSTANCES OF SPECTRAL AND dream testimony recorded in our criminal annals the case which I propose to recall is second in interest only to that of Sergeant Davies. Of the slaying of that worthy, and of the part played by his ghost in attempting to bring his murderers

to justice, I have elsewhere given some account; and the manner of his dispatch and reappearance has been investigated both by Mr. Hill Burton and by Mr. Andrew Lang. The circumstances attending the murder of Murdoch Grant, however, are less familiar; and that they failed to attract the notice of those inquirers is to be regretted.

The facts in their supra-normal aspect would strongly have appealed to Mr. Lang. But the entertaining collection of evidence which forms his contribution to the literature of apparitions makes no mention of the godly young schoolmaster of Assynt, with an extra-mural weakness for damsels, dress, and drams; of the secret which the dark waters of Loch Tor-na-Eigin shrank from keeping; nor of the Voice that whispered at midnight in the ear of Kenneth the Dreamer. These, so far as I am aware, are the only two cases of dream testimony known to Scots jurisprudence, the atmosphere of the Justiciary Court being, as appears, unfavourable to ghostly evidence.

Of the English cases the best examples are furnished by the fair sex. On 23rd December, 1695, a victualler of Grub Street, London, named Stockden, was murdered by some persons unknown. Justice was at fault, until one Mrs. Greenwood volunteered the statement that the dead man had appeared to her in a vision, and had shown her a

house in Thames Street where, as he alleged, one of his murderers lived. On two subsequent occasions the *revenant* showed her further the portraits of his assassins. The likenesses must have been excellent, for the dame was thereby enabled to identify the subjects, who duly suffered on the scaffold. An account of the case was published by the Rev. William Smithies, curate of St. Giles, Cripplegate, in whose parish the circumstances occurred. A more modern instance is furnished by the well-known case of Corder, who on 18th May, 1827, murdered Maria Marten at Polstead, Suffolk. After Maria's disappearance her stepmother dreamed on three successive nights that the girl had been murdered and buried in a lonely hut called the Red Barn. The dream proved true, and was the means of bringing Corder to the gallows. On the night of the ceremony, as Macready was playing *Macbeth* at Drury Lane, delivery of the line "Is execution done on Cawdor?" elicited from the front the unexpected reply: "Yes, sir; he was hung this morning at Bury." There are several reports of the trial, which excited much interest in its day. In Ireland, too, a curious case occurring in 1751 is preserved in the *Newgate Calendar*. Adam Rogers, an innkeeper of Portlaw, near Waterford, dreamed one night that he saw at a certain green spot in an adjacent mountain two men, one of

whom attacked and slew the other. Profoundly impressed by the vividness of the scene, he told his dream to his wife, neighbours, and parish priest. Presently there came to the inn two strangers, Hickey and Caulfield by name, in whom the landlord was horrified to recognise the actors in the visionary tragedy. He failed to persuade the foredoomed victim to depart from his companion's company; they left the house together, and shortly thereafter Hickey was found robbed and murdered at the destined spot. Identified by the innkeeper, Caulfield was tried, convicted, and executed, the priest at the trial corroborating the dreamer's tale.

Apart from its supernatural elements, however, the present case is important, not only by reason of the astonishing psychology of the youthful malefactor, which is in itself a sufficiently remarkable illustration of the peculiar puritanism of the Highlands at that period, but also as affording a fine example of a conviction upon purely circumstantial evidence, completely justified by the subsequent confession of the criminal.

Readers of *The Pirate* will remember that crafty character Bryce Snailsfoot, the peripatetic vendor of smallwares about the Northern Isles, designed in the local dialect a jagger. Such was the occupation followed by one Murdoch Grant, a disciple of Autolycus, whom we should now call a pedlar,

packman, or hawker, but who in the more picturesque language of the time was dignified by the style and title of travelling merchant. "It's a creditable calling and a gainfu'," as Andrew Fairservice remarked, "and has been lang in use wi' our folk." A native of the west coast of Ross-shire, Murdoch when at home lived at Strathbeg in Lochbroom, and his business connection embraced the shires of Sutherland, Ross, and Cromarty. Travelling on foot with his pack upon such an extensive beat, and in a country so sparsely populated, his appearances at the several villages within his circuit were necessarily of the nature of angels' visits; and the goodwife who renewed one day her stock of napery from his store might have to wait long before the course of his itinerary brought him to her door again.

On Thursday, 11th March, 1830, in the parish of Assynt and shire of Sutherland, were celebrated the obscure nuptials of a damsel named Betty Fraser and the man of her choice. We are not further concerned with the humble pair, their union merely serving to fix a date which enabled divers persons, who had no other means of reckoning the flight of time, afterwards to speak to certain events with reference to that occasion. Murdoch Grant attended the marriage festivities, and a wedding being good for trade, he lightened his pack materially at the expense of the company. When he left home for

Assynt he had valued its contents at £40, and as he also carried with him in a red pocketbook a sum of £15 or £16, it will be seen that the travelling merchant was in a fair way of business. As a thriving bachelor there was no one's convenience he need study but his own; he was stout and healthy, and had been so for some five-and-twenty years; and his family relations were limited to a brother in Ross. For a week after the marriage Murdoch remained in the district, staying at nights in the houses of his various customers, his intention being, when he had supplied the requirements of Assynt and had collected some outstanding debts, to return to Strathbeg in time for St. Patrick's market, which was held in the middle of spring. On Thursday, 18th March, he set out for Drumbeg to look up certain of his debtors, passed the night there in the house of one Alexander Graham, and was met next morning with his pack upon the road on his way back from the village, going in the direction of Nedd. After that fateful Friday Murdoch Grant was seen no more among the living; on the bleak moors of Assynt, beyond the Sutherland hills, he had made his last journey: the travelling days of the merchant were done. His disappearance from the neighbourhood caused little comment; his business was over, and it was assumed that he had returned to Strathbeg. His friends there, believing

that he had gone into the Reay country, made no inquiries for him in Assynt.

The part of that parish with which we are concerned is bounded on the west by the sea. "Barren moorlands and grey sterile beaches with flinty sands; troops of forlorn pines along the hillsides where the red deer keeps his ward; rents of blue sea sprinkled with green desolate islands: a God-forgotten land"—so has it been described, and the scene is sufficiently forbidding for the setting of a great crime. Murder, to be fully effective, should be done out of doors, and if possible amid surroundings agreeably savage. Everyday rooms of commonplace houses are, to my mind, not in this connection appropriate. The only place of such sinister association I ever saw that, so to speak, filled the bill is the gully of Corrie-na-Fuhren at the head of the great grim glen of Sannox in Arran, where Rose met his death at the hands of his friend. Madeleine Smith's bedroom, the basement in Sandyford Place, Dr. Pritchard's parlour, the *troisième étage* of M. Chantrelle, Miss Gilchrist's dining room—all are alike curiously inadequate, and fail to satisfy the anticipatory sense of dread.[1]

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[1]The death of Rose is described in "The Arran Murder," in this collection. The other cases mentioned will be found in the Notable British Trials Series; in The Trials of Madeleine Smith; Mrs. M'Lachlan; Dr. Pritchard; Eugene Chantrelle; and Oscar Slater.—E. P.

But Tragedy does seem suitably staged in Assynt. The district abounds in mountain lochs of varying depth and size, wild, solitary watering-places of the deer but rarely visited by the foot of man. One of these, a deep precipitous tarn named Loch Tor-na-Eigin, lies by the way leading from Drumbeg and Lochindarroch to Lynmeanach and Lynmore.

A month after Murdoch Grant's departure, a boy, John Mackenzie, son of a cotter in Drumbeg, passing this loch saw the body of a man lying in the water, then, owing to the dryness of the season, unusually low and clear. On his return home he told what he had seen. The news spread quickly through the neighbourhood, and presently, surprising as it seems in a place so thinly populated, some fifty folk assembled by the water-side. The body was dragged ashore; the antiseptic properties of the moss of which the banks of the loch consist had delayed decomposition, but the face and head showed manifest signs of injury, and were not readily recognisable. Among those who stood gazing at the poor remains and speculating as to their identity was a tall, fair, good-looking lad of twenty, Hugh Macleod by name, who despite the fewness of his years was himself what Mr. Squeers termed "a instructor of youth," and of whom I shall have more to say in the sequel. They debated whether the dead man had perished by suicide or by acci-

dent, or had met with foul play; and in accordance with the ancient Scots belief in the ordeal by touch, of which the case of Philip Stanfield in 1688 furnishes so striking an example, those present drew near and severally touched the corpse. It was remarked at the time that of the company Hugh alone refrained; probably, being a schoolmaster, he contemned their ignorant superstition. He gave, however, his vote for the theory of accident. And now there arrived upon the scene one who had known the pedlar well, and at once identified the body as that of Murdoch Grant—but there was no sign of his pack. Then an elder of the kirk decided that someone should go to the manse, tell the minister what had happened, and arrange with him for the burial. Hugh Macleod, as the best educated person present, was unanimously named for the job. But the young schoolmaster, strangely enough, was averse from accepting office; evening approached, the manse was six miles distant; a twelve-mile walk was indicated, and he disliked travelling alone in the dark—his superior education notwithstanding, Hugh, as appeared, did after all retain some leaven of superstition. So it was arranged that another lad, Donald Graham, should bear him company, and they accordingly set forth upon their errand. By general consent the body was then committed to the water, "to keep it fresh until

next day," the people sought their widely scattered homes, and night and silence fell upon Tor-na-Eigin.

Meanwhile, the two lads proceeded on their journey, Hugh meditative, and Donald full of the day's mysterious discovery. Donald, boy-like, was all for robbery and murder, and held it a very hard thing that, as it had occurred so near to where they lived, they might themselves be suspected, "though God and man knew that they had not done it." Hugh stopped, and looked at his companion. "Do you think that I would do it?" he asked. Donald protested that he could as soon conceive his own little brother guilty of such a crime. "You are right, my lad," said Hugh heartily, and remarked that he had never even seen the pedlar. When they reached the manse Hugh delivered to the minister the elder's message, and invoked his aid in the matter of "a body that had been drowned." The Rev. Mr. Gordon was much concerned; he inquired regarding the appearance of the body, and how it came to be in the loch. Hugh replied that it exhibited certain scratches, due, no doubt, to tossing about in the water and knocking against the rocks; as to the cause of death, that, he said, was plainly either accident or suicide. Donald, not having inspected the body closely, expressed no opinion. The two young men then went back

to their homes, where Hugh, at least, slept better and longer than usual.

Next morning the minister and his parishioners were at the loch betimes, the body was taken out of the water, placed in a coffin which had been provided, and buried upon the spot—this in spite of the fact that the injuries to the head were visibly wounds, not scratches, that nothing was found upon the body, that the pockets, being turned inside out, had presumably been rifled, and that the pack with all its valuable contents was missing. Hugh, as has been said, slept well; he even overslept himself, and was too late to attend the obsequies, but he was seen to watch the proceedings from an adjacent hill. So the travelling merchant lay at last in his resting grave, and was like to be forgotten; how his pilgrimage ended in those deep and secret waters no man might ever know.

The gentle reader, that discerning person, will doubtless have observed that probably there was more in our young schoolmaster than has hitherto been allowed to meet his eye, and the time is come to justify his acumen. For my ability to execute this purpose I am indebted to a pamphlet, now rather rare, published at Inverness, and entitled *Life of Hugh Macleod, Assynt.* The subject of this anonymous biography, the only son of Roderick Macleod, tenant of the croft or small farm of

Lynmeanach in Assynt, was born in 1809. His parents, hard-working, decent folk, thought no sacrifice too great for their favourite child, and little Hugh found his lot easier and more pleasant than usually befalls a boy of his class. Special care was taken of his education, his father early instructing him in worldly and religious lore; and when in time he outgrew the limits of the paternal curriculum, there being then no school within a suitable radius, a tutor was actually engaged to teach him for two years. The boy was bright and engaging, physically and mentally; his biographer exhausts the available adjectives in marshalling his many virtues, but it is fairly obvious that Hugh was from the first what critical relatives term a spoilt child. Later he went to a school which had been opened in the district; in summer he helped his father about the farm, and in winter devoted himself to his studies. But the education of the young scholar proved more costly than his parents' narrow means could bear. It became necessary that the lad should contribute something to the family exchequer, so a situation as shepherd was found for him with a neighbouring farmer. Unfortunately his fellow-servants were a wild lot; the precepts of the Shorter Catechism, in which he had been so sedulously drilled, soon ceased to regulate his conduct. Gambling at cards, swearing, and, his biog-

rapher is horrified to add, using the Sabbath to train and exercise the sheep dogs, were among the vices which he acquired from the companions of his pastoral pursuits; to these fell later to be added a taste for whisky and, in his own curious phrase, a notion for pretty dress. The national failing calls for no comment; the personal vanity is more interesting. This love of fine raiment, so remarkable in view of the lad's circumstances, was the result of that weakness which Mr. Weller deemed an amiable one: devotion to the softer sex. Hugh had laid to heart the philosophy of Fergusson:

"If ony mettl'd stirrah green
For favour frae a lady's e'en,
He maunna care for being seen
  Before he sheath
His body in a scabbard clean
  O' gude Braid Claith.

"For, gin he come wi' coat thread-bare,
A feg for him she winna care,
But crook her bonny mou' fu' sair,
  An' scald him baith;
Wooers shou'd ay their travel spare
  Without Braid Claith."

As the peacock displays his splendid plumage to the best advantage in sight of the admiring hen, so

Hugh sought to captivate the country maidens by the goodliness of his apparel. He seems to have been only too successful. But the part of Don Juan is even on a provincial stage an expensive one to play; debts and other obligations were incurred, and the lad began to seek in drink forgetfulness of the mercantile and moral claims accumulating against him. His declension was of course gradual; but Sabbath-breaking in due time blossomed into burglary. In 1828 Hugh, being then eighteen, left the farm, and was appointed assistant schoolmaster at Coigach in Lochbroom. This, from what we know of his character, seems surprising; but his biographer assures us that he still enjoyed a fair repute as "a youth whom the parish looked upon as the good son of a pious father: a moral, model lad." Beneath this admirable surface, however, the current of his life was running ever to darker and more dangerous depths. His social position had improved with his professional advancement; such society as those outlandish parts afforded was open to him, his good looks and manners made him everywhere welcome, and at weddings and dances he was in high request. His appearance was even braver than before, as became the more refined taste to which it was now addressed. All this meant money, and money in that "God-forgotten land" was hard to come by. His biographer states

that the young schoolmaster's salary was "all expended before it was earned"—rather a Hibernian way of putting it; his credit was exhausted, and he was faced with exposure and disgrace.

In June, 1829, he broke into a shop in Lochbroom, robbed the till, and stole, characteristically, a web of stylish tweed. This he hid under a cairn of stones, where it lay till the affair blew over. When winter came round he had it made into a new suit, explaining that he had bought the cloth from a travelling merchant. On another occasion he stayed at home one Sunday on the plea that his shoes were in bad repair. When everybody else was in church and the houses were deserted, Hugh let himself into a neighbour's cottage, opened a chest with his own keys, and abstracted the "pose" which the thrifty Scot is wont to consign for safety to "the benmost part of his kist nook."

These were mere temporary expedients, and but postponed the day of reckoning, so Hugh decided upon a bolder stroke that should at once discharge his debts and replenish his clothes-press. He had left his situation at Coigach—whether voluntarily or not we do not know—and by 1830 was at the school of Nedd, nearer his own home, and was living with his parents. There were then hardly any shops in Assynt, the commercial affairs of the district being, as we have seen, conducted by migratory

pedlars, who came and went about the countryside after the fashion of the wind. These men in the course of their journeyings must make plenty of money, which *ex hypothesi* they would have about them; the contents of their packs, too, would form a welcome addition to the wardrobe of a young gentleman in difficulties. Such persons having no abiding city would, in the event of their disappearance, be less likely to be missed than settled folk. Pondering these things, Hugh made up his mind. A strange conversation which at this time he held with a boy coming home one day from school is recorded by his biographer. "'We are poor, Donald,' said the schoolmaster, 'and there are plenty travelling merchants here about. Though we should kill one of them and take his money, there would be no harm.' 'But we could not do that without being found out,' said the boy, whose name was Donald Wilson. 'Would you tell?' said Hugh; 'for if you would not tell, we could do it easily enough.' 'Oh, Hugh, Hugh!' was the reply, 'though I should conceal it, God would not conceal it.'" Perceiving the propriety of his pupil's sentiments Hugh changed the subject, but not, as we shall shortly see, his mind. It is to be hoped that with so unscrupulous a pedagogue, the moral sense of the other scholars was as sound as Master Wilson's; from what source soever he had acquired

his principles, they were certainly not derived from his preceptor.

Our Eugene Aram was too sanguine in more respects than one. The episode was not to close with the moorland grave, neither was the arm of the law shortened in Assynt. Word of the irregular doings at Loch Tor-na-Eigin reached the ear of the Procurator-Fiscal for the county. This functionary, who in Scotland exercises at will and in his single person all the powers of an English coroner and jury, decided that the case called for investigation, and on 29th April, accompanied by the Sheriff of Sutherland and by two local doctors, he arrived upon the scene of action. The coming of these authorities caused a sensation in the district, and once more the solitude of the mountain tarn was invaded by a wondering crowd, among whom, to borrow a familiar phrase of G. P. R. James, might have been observed the handsome figure of the schoolmaster. Hugh is said to have been recommended to the Sheriff by the minister as a skilful and trusty person, on whom perfect reliance might be placed! There was no hanging back now, as on the occasion of the burial. Hugh gave ready assistance in opening the grave, the body of the pedlar was exhumed, and, having been identified by Alexander Grant as that of his brother, the doctors made upon the spot a post-mortem examination. The result was

embodied in a report of which we shall hear again; meantime it is enough to note that the reporters found upon the head certain dreadful wounds and fractures, inflicted as they believed by a hammer, and that these were in their judgment the cause of death.

As Hugh watched the surgeons at their gruesome task, the strange thought crossed his mind that he himself might one day be the subject of a similar autopsy. He shook off these ugly forebodings, however, and placed his services at the Sheriff's disposal in the precognition which his Lordship proposed to hold regarding the affair. During this inquiry the officials were invariably attended by the schoolmaster, "who through his acquaintance with the Gaelic tongue, and his knowledge of the inhabitants, proved of great assistance as an interpreter." But in spite of these advantages the evidence obtained threw little light upon the tragedy. No one had been seen with the pedlar after he left Drumbeg, no article belonging to him had been found, and the pack and its contents were still missing.

At this stage, when the inquiry seemed fruitless, an incident occurred for which we have the authority of a writer in *Fraser's Magazine* (December, 1856), to whom I am already indebted for certain facts supplementary of the official biography. By

one of those accidents which will happen in the best regulated crimes, Hugh chanced not to be as usual at the Sheriff's elbow when his Lordship one day visited the village post office. "During a desultory conversation the postmaster incidentally stated that soon after the date of the murder he had given change for a £10 Bank of England note to a person who, he did not think, *should* have had so much in his possession." The Sheriff was surprised to learn that the reminiscence related to his scholastic assistant. This clue obtained, the inquiry was resumed, and was directed to the state of the schoolmaster's finances before and after the crime. On this occasion his services as interpreter were dispensed with. The evidence upon the point was deemed highly suspicious; and Hugh, being informally examined, and failing to give any explanation more satisfactory than a flat denial of all that the witnesses said, was arrested and taken to Dornoch. "In the declaration which he emitted before the Sheriff," says his biographer, "there were so many statements that were inconsistent with his former explanations, as well as several falsehoods, that the Sheriff committed him to jail on a charge of murder. In a second and third declaration, made before the Sheriff-Substitute, Hugh got himself still further involved in a mesh of falsehoods, and these were an important part of the evi-

dence against him. When questioned by the officials regarding the stockings he wore, and some blood marks on his coat, he replied that the former were his own and that the blood was that of a bird he had shot." I shall return to the stockings later.

While Hugh lay in Dornoch jail his biographer informs us that he "maintained his usual carelessness of demeanour and love for fast living, and he actually found means to purchase whisky through the jail window with the pedlar's money." In the circumstances a fast life must have been difficult to lead, though Hugh's was, in a sense, then fast enough. As to the facilities of communication with the outer world, Alexander Sutherland, a shoemaker, who, I regret to say, hailed from the Canongate of Edinburgh, stated at the trial that, being in Dornoch one day in May, 1830, he was passing the prison when Hugh threw out to him from the window a snuff-box containing a pound note, with the request that he would get the box filled and the note changed. It appeared on cross-examination that though he executed the commission the perfidious shoemaker returned only five shillings of the change. The prisoner's comments upon this transaction are not recorded. He was visited regularly by the Rev. Mr. Kennedy, to whom he stoutly protested his innocence. As on these oc-

casions the good man always prayed that the perpetrator of the crime might be brought to justice, Hugh must have found his ministrations rather tedious.

One night the prisoner had a remarkable dream which he afterwards confided to the minister. He dreamt that he stood in a burial ground he had never seen before, watched an old man digging a grave, by the side of which lay an empty coffin. When the grave was finished the visionary sexton turned towards him, and he was horrified to recognise his father's face. "Hugh," said the old man, "here is your grave; lie down in it now, for your time is come." Hugh, seized with terror, pleaded for delay; and the old man, moved apparently by his son's distress, said, "Well, Hugh, go for this time, but remember that in a year your coffin will meet you. Mark that; do not forget." What weight attached to the old gentleman's prophecy will presently appear; if Hugh told the truth the coincidence is curious. He was shortly thereafter taken to Inverness, where the trial was fixed to take place on 22nd September, 1830, at the Autumn Circuit in that town. Lords Meadowbank and Mackenzie presided, the diet was called, the indictment read, and the usual interlocutor of relevancy pronounced. The clerk then began to draw the names of the jury. Two special jurymen

having been challenged by the pannel[2] and one by the Crown, the clerk announced that there was not a sufficient number left to form an assize. The diet was accordingly deserted *pro loco et tempore*, and the prisoner was re-committed on a new warrant. The proceedings are reported in the *Edinburgh Courant* of 25th September, 1830.

Meanwhile, we leave Hugh in durance at Inverness awaiting his new trial, and approach the supernatural element which distinguishes his case. Among those who had joined in the search for the missing pack was a young man named Kenneth Fraser, locally known as "The Dreamer." Whether he owed the designation to an habitual gift of the second sight, or whether it was due merely to his experience in this connection, does not appear. He was employed as a journeyman tailor in Clachtoll, and was on friendly terms with Hugh Macleod. One night in the spring of 1831, when the search had been abandoned as hopeless, Kenneth, being asleep in his own home, heard "a voice like a man's" which said to him in Gaelic: "The pack of the merchant is lying in a cairn of stones in a hollow near their house." Who "they" were the Voice did not specify, but the words were accompanied

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[2]*Pannel* is defined by Jamieson as "one brought to the bar of court for trial." It should not be confused with *panel*, meaning a list of jurors.—E. P.

by a clear vision of a place—then unknown to Kenneth, but which he later had no difficulty in recognising as situated on the southwest side of Loch Tor-na-Eigin—"the ground fronting the south, with the sun shining on it, and the burn running beneath Macleod's house." He saw the scene plainly: "just as if I had been awake." Kenneth told to the authorities his weird tale, and forthwith was sent with an officer to see if he could identify the spot. He soon found the place, exactly as he had seen it in his dream, but, alas! a search in the hollow yielded no result: "We found nothing there." Pursuing their investigations up the burn-side they presently discovered, hidden in a hole among the stones, certain articles which were afterwards identified as the pedlar's property. "I had not seen this place in my dream," says Kenneth, "but it was not far from the place I had seen in my dream that the things were found." Now, though unwilling to anticipate the *dénoûment*, I may here observe that, as Hugh himself tells us, the pack was first concealed in a cairn of stones near the scene of the crime, that later it was otherwise disposed of, and its contents were hidden where Kenneth found them in April, 1831. It would be instructive to know whether the original cache were not the scene presented to the mind's eye of the Dreamer in the midnight vision, but on this

point we have, unfortunately, no light and the relative dates are not given. One would prefer to accept this view rather than believe that a Voice from another world either made a stupid blunder, or, what is worse, failed wilfully to tell the truth. Kenneth's good faith in the matter seems indisputable, as will appear when later we consider his evidence.

When, in due course, my Lords of Justiciary came to Inverness upon the Spring Circuit, Hugh was once more placed in the dock before them. On 26th April, the diet having been called, the Advocate-Depute at once rose and moved that it be deserted. He was, he said, most unwilling that the trial should be again postponed, but circumstances had unexpectedly arisen which left him no alternative but to ask for an adjournment. New information of great importance had been communicated within the last six days as to the discovery of the greater part of the pack of the unfortunate man who was murdered. The communication to which the prosecutor referred had, as we have seen, been made by the ghostly Voice, but no doubt the Advocate-Depute felt a delicacy in citing to the Court so impalpable an authority. The other ground upon which his motion proceeded was more normal. One of the most important witnesses, George Mackenzie, Lochinver, though personally

summoned to attend, had absented himself, and application was made for a warrant for his apprehension and committal until the next trial. The Court granted the motion and the required warrant. The proceedings are reported in the *Courant* of 9th May, 1831. So Hugh was taken back to prison; it almost seemed as if there were something in the visionary-grave business after all. Perhaps he, too, thought so when within a year of it he was again called upon to face his judges.

On Tuesday, 27th September, 1831, eighteen months after the pedlar's death, Hugh Macleod was placed at the bar of the Circuit Court of Justiciary at Inverness to answer for the third time the charge of his murder. In view of the interest of the proceedings it is regrettable that the trial was not officially reported, the excellent series of Justiciary Reports which was begun in 1826 being for the time discontinued. We have therefore to rely upon the newspaper reports, the best of which is that of a local journal, the *Inverness Courier;* those of the *Scotsman* and *Courant* are provokingly brief, the leading papers of the day having then no room for anything unconnected with the Reform Bill. The judges were Lord Moncreiff, of whom after forty years of unbroken friendship Henry Cockburn wrote so kindly, and Lord Medwyn, the friend of Scott, who often men-

tions him in the *Journal*. The prosecution was conducted by the Advocate-Depute, whose identity is merged in his office—he is named in none of the reports; and the prisoner was defended by Charles Neaves, in later life a witty and gifted judge. The indictment charged the pannel (first) with having, on 19th March, 1830, on the southwest side of Loch Tor-na-Eigin, feloniously assaulted Murdoch Grant, pedlar or travelling merchant, with a hammer or other instrument, by beating him about the head until he became insensible, and shortly afterwards died in consequence of the wounds so received; and (second) after disabling him from making resistance, with having robbed him of £30 in bank notes, a purse containing £6 in silver, and a pack containing silk handkerchiefs, prints, cottons, and worsted stockings, to the value of £4. The pannel pleaded not guilty, and after some formal evidence Alexander Grant, the dead man's brother, was called. He told what he knew of Murdoch's property and plans, when he last saw him alive, and how he identified him at the exhumation. Then the boy who discovered the body, and divers witnesses to its being taken out of the loch, took up the tale. Hugh's behaviour on that occasion was described, and the Rev. Mr. Gordon narrated his visit to the manse when he sought to give the impression that it was a case of accident. Drs.

Ross and Grant were next examined to prove the medical report. The injuries which they found upon the body were as follows:

"An incised wound about one and a half inches behind the left ear of two inches in length and the whole external ear completely destroyed, the temporal and parietal bones being battered in. A little behind the left ear there was another wound which penetrated to the bone. We also discovered a vertical deep wound immediately below the external angle of the left eye of an inch in length. On examining under the chin we found a deep wound of about an inch in length, and the jawbone completely fractured. On the right side of the head we found a tumefied contusion, and on cutting it and removing the external integument we met with a quantity of coagulated blood. Having also examined the thoracic and abdominal viscera we found the whole of the organs in a very sound and healthy state."

These injuries caused death, and were, in the reporters' judgment, inflicted by a blunt-edged iron instrument, such as a shoemaker's hammer or a hatchet. They were further of opinion that life was not instantaneously extinguished, because of coagulation having taken place in the severe contusion on the right side of the head. The remarkable preservation of the body was due to the

antiseptic properties of the moss in which it had lain. They believed that life was extinct before the body was committed to the water. A hatchet, hammer, and piece of iron being produced, both the medical witnesses agreed that any one of these was capable of producing the injuries. In reply to the Court, they stated that it was impossible the wounds could have been caused by the body being knocked about in the water.

The next set of witnesses spoke to the movements of the pedlar prior to his disappearance. They were vague as to dates, but they all remembered Betty Fraser's wedding, which was proved to have taken place on Thursday, 11th March, 1830, and were enabled to speak to certain events as occurring within the ensuing week. With several of them Grant had spent a night; they had seen his money and the contents of his pack. Evidence was then led to show that the pannel had been in possession of goods belonging to the deceased. It was proved that after Hugh's arrest the stockings which he was wearing were taken from him in Dornoch jail. These were now produced, together with a second pair found in his room, and the following evidence in regard to them was given. Mrs. Gordon, wife of a shepherd at Lochinver, stated that a month before the Sheriff came, the prisoner and Donald Graham were in her house one wet day. Hugh asked

her for a pair of dry stockings, and left with her those he was wearing. They were never reclaimed by him, and she identified them as now produced. Donald had chaffed him about "changing his feet," saying his own were equally wet, but Hugh replied, "What do you know about why I put them off?" Robert Gordon, her husband, and Donald Graham, both corroborated this, and also identified the stockings. Donald was the lad who had accompanied Hugh to the manse, as already mentioned. Widow Mackay stated that one day in the spring of 1830 Murdoch Grant and Hugh Macleod came together to her house in Drumbeg. She bought some cotton from the pedlar, for which she gave in exchange two pairs of worsted stockings knitted by herself. She identified those produced as her own work, but could not swear they were the actual stockings which she gave to Grant. She had sold only one other pair since to a man who went to the herring fishing. Hugh and the pedlar left her house together; they seemed on most friendly terms. Grant told her he intended staying with Alexander Graham that night. This fixed the date as Thursday, 18th March. Her son, who had been present on the occasion, corroborated her statement. Then Anne Macleod, the prisoner's sister, was examined. She used to knit the stockings that her brother wore. The stockings produced were not her work.

On the Friday in question (the day of the murder) Hugh went to his school in the morning as usual; she did not see him when he returned at night. Isabella Kerr, cousin of the accused, stated that on a Friday some four weeks before the body was found she met Hugh near the loch. "You need not be telling that you saw me," said he, as they parted. He went towards Drumbeg.

Then followed a body of evidence respecting the state of the pannel's pecuniary resources before and after Friday, 19th March, 1830. It was proved that he had been critically in debt, and that within a week of that date he was attempting to borrow trifling sums; immediately after it he was flush of money, changing £5 notes, and buying for cash whisky and new clothes. One young lady, who saw Hugh at the loch when the body was found, noticed that he was wearing a new suit, and in the course of conversation, having doubtless had experience of his methods, she remarked with considerable shrewdness, "It will be somebody's loss." He paid off all his debts, bought a gun for 32s., and treated his acquaintances with a liberal hand. It was observed that he made all payments out of a red pocketbook, such as the pedlar was proved to have used. It was further proved that he had been absent from school on that Friday, and one of the boys saw the pocketbook in his hands on the

following day. His explanations of how he obtained the money were denied on oath by the persons concerned.

Midnight had long since struck, and the candles were burning dimly in the crowded Court-room, when the prosecutor called his last witness—Kenneth the Dreamer—who now told his weird tale with fine effect, to which the lateness of the hour, the long strain of the proceedings, and the sympathetic beliefs of his Highland audience all powerfully conduced. He stuck to his supernatural story, and denied any human knowledge of the hiding of the pedlar's goods: "He had never been told that the articles belonging to the pedlar had been put into a hole, and he knew nothing whatever of them but from the dream." The Crown case closed with the reading of the prisoner's three declarations, of which we are told no more than that the statements they contained were as to many particulars absurd and contradictory in themselves, and on other points in direct conflict with the evidence. No witnesses were called for the defence. The addresses of counsel to the jury are not reported. We are only informed that the Advocate-Depute's speech occupied two hours, that of Mr. Neaves nearly as long. The first is described as masterly, the second as equally eloquent—counsel's line being that the case was one of

mere suspicion, and that there was no such absolute proof of guilt as would entitle the jury to convict. Lord Moncreiff in his charge emphasised the importance of circumstantial evidence: "Cases of this occult and secret nature were often proved more satisfactorily by the evidence of circumstances than by the direct testimony of those who might have seen the deed done, for the testimony of circumstances brought conviction to the mind, while a more direct proof might possibly be the result of perjury." The *corpus delicti* seemed to him to be established beyond all doubt, and the only question was whether the crime had been committed by the pannel. His Lordship then reviewed the evidence, laying stress on the facts that Grant was proved to have been in the accused's company on 18th March, the day before he disappeared, that the stockings which he got that day were traced to the prisoner's hands (feet would perhaps be preferred by purists), and that on or about 19th March the pannel passed from poverty into the possession of money for which he could not account. There was also his suspicious behaviour on various occasions, as well as the many falsehoods and contradictions in his judicial declarations. At the conclusion of the charge the jury retired, and after an absence of a quarter of an hour returned by their chancellor, Colonel Rose of

Castlehill, a unanimous verdict of guilty. Hugh, with a confidence by no means uncommon in his situation, had counted, it appears, on an acquittal. He at once started to his feet and exclaimed, "The Lord Almighty knows that I am innocent. I didn't think anyone in this country would be condemned on mere opinion." Lord Medwyn, in proposing the sentence, said the conviction and verdict were founded on the clearest evidence, and Lord Moncreiff, assuming the black cap, sentenced the prisoner to be executed at Inverness on 24th October, between the hours of two and four afternoon, and his body to be given to the Professor of Anatomy in Edinburgh for dissection. So Hugh's foreboding at the exhumation of his victim was justified in the event. The Court rose at nine o'clock, the sederunt having occupied twenty-four consecutive hours.

No sooner had the prisoner returned to his cell than the Rev. Mr. Clark, his ghostly counsellor, wrought so powerfully upon his conscience that Hugh under the seal of secrecy made a full confession of his guilt. The ice thus broken, the minister urged him to make public atonement, and in the end the Sheriff was called in, and the confession repeated in his presence. Upon the facts so disclosed by Hugh I have already drawn in telling his story; the circumstances of the murder, however, remain

to be told. Having determined to slay and rob the travelling merchant, Hugh, on Thursday, 18th March, was on the watch for his prey on the road between Drumbeg and Nedd. Fate sent the pedlar thither; Hugh made up to him, and accompanied him to Widow Mackay's house, where the stockings were bought. Before they parted Hugh arranged that they should meet again next day, when he would take the pedlar to Lynmeanach and there buy the whole contents of his pack. The pedlar promised not to mention the matter to anyone. Next morning Hugh rose betimes, and, amazing as it is to read, he knelt down in the barn and prayed for God's blessing on his undertaking! "*With unconscious tact!*" says his biographer, "he avoided making any allusion to the intended murder." The italics are the writer's. He then arose, and looking about for a suitable weapon chose a large wedge-shaped mason's hammer, the handle of which he shortened for convenience of carriage. After the family breakfast, the better to conceal the weapon he put on his father's greatcoat, and took the road for Nedd. The appointment was for noon, so Hugh had some hours to wait. These, the day being inclement, he spent in a cave awaiting his victim and reviewing his spiritual state, which, had space so served, it were curious to consider. Presently the pedlar appeared; Hugh joined him,

and they walked towards Nedd. Passing a cemetery the pedlar sat down to rest awhile—upon a grave. On resuming their journey they struck off across country towards Lynmeanach, Hugh sometimes carrying the pack. Several times did the assassin essay to strike the fatal blow, but he was obsessed by a fear that someone might be watching him from the hills. What followed is best described in his own words:

"At length we got near Loch Tor-na-Eigin: I was going first. I suddenly turned round, and with a violent blow under the ear felled him to the ground. He lay sprawling in great agony, but never spoke. I took the money out of his warm pocket, and put it into mine. There was about £9 in all. I gave him two or three violent blows, and dragged the body into the loch, as far as I could with safety to myself. The body would not stay down, and I got a large stone and placed it on the chest. Even then life was scarcely gone, for the air kept bubbling up from the mouth. It was evening, but not very dark. I then threw the hammer into the loch, and returned and rifled the pack. I took the most portable things, and sunk the heavy goods in a mossloch further into the moor. After taking the money from the pocketbook, I buried it on the edge of a bank near where the body was thrown."

Every day as he came and went between his

home and school Hugh had to pass the loch in the depths of which slept the secret of his crime. As spring advanced the waters sensibly receded, until at length he could see the body where it lay upon the moss beneath the bank, but he feared to do anything further in case he should be detected in the act. The contents of the pack were, as I have said, twice hidden before they were found. The pocketbook was not concealed till later.

As a modest student of criminology I am often amazed at the sudden development in the most abandoned persons of a high moral tone and fine religious feeling so soon as the world, the flesh, and the devil are definitely done with. The godly end of the malefactor is almost a foregone conclusion, and to this rule Hugh Macleod was no exception. His letters, written after conviction, to parents, friends, and jailer are models of propriety, and reflect the utmost credit on the Rev. Mr. Clark's skill in rapid conversion. That gentleman seems rather to have been carried away by his success, for we read in an account of the case in the *Quarterly Review* (September, 1851): "On the Sunday night preceding the execution several ministers entered upon religious exercises with the prisoner. Some refreshments being introduced, *they requested him to ask a blessing*, and he did so, holding forth for half an hour with a force, fluency, and

correctness which delighted the company." The scene recalls Lady Warriston's last supper in the Tolbooth of Edinburgh, but that took place in 1600, this in 1831.

Monday, 24th October, was a great day for Inverness. The place of execution, at the east end of the town, to the seaside, was named significantly Longman's Grave. "The procession was a most impressive sight. In the centre walked Macleod clad in the grim costume then considered suitable for the occasion. This consisted of a long black robe, which covered the figure from the neck to the ground, and a white nightcap for the head. There was a halter round his neck, the end of which was carried behind by the hangman. At Macleod's right side walked the Rev. Mr. Clark and Mr. E. Paterson, schoolmaster, and at his left side the Rev. Mr. Kennedy and Mr. Mackenzie, shoemaker. The magistrates of the burgh followed, walking in procession, and the party was guarded by a number of special constables. A company of the Inverness-shire Militia was also present as a special escort. Around and behind the execution party came a great crowd of people, numbering not less than seven or eight thousand, who had assembled, in spite of unfavourable weather, to be present at the execution." It is a pity that the day was wet. From the scaffold the prisoner delivered

an address of which the report occupies two closely printed octavo pages. He exhorted his hearers to abstain from whisky and cards—"If I were to live for a hundred years never would I put a glass to my head, never would I hold a card in my hand"; also to eschew the company of strange women—"If I were to live a hundred years I would not open my mouth to one of them." The grapes had lost their savour. Finally, he declared Kenneth Fraser entirely innocent of any knowledge of the crime. And so Hugh Macleod went to his last account, and his coffin, as was foretold, met him within the year. That night the minister preached an impressive sermon, in which he assured his congregation of the deceased's salvation "as unhesitatingly as if he had wielded the keys of St. Peter."

It would appear from Hugh's dying declaration that some suspicion of complicity popularly attached to Kenneth, though it was proved at the trial that he had been at his work as usual every day throughout the week in which the murder was committed. How, then, came the Dreamer to dream as he did? He admitted that in the beginning of April, 1830, he and Macleod went about drinking together for a day or two, Hugh paying for the liquor out of a red pocketbook with money which he explained to be his official salary, though he didn't wish the fact to go further. It is highly

probable that the lads being under drink taken, something was let drop by Hugh which, working in Kenneth's mind, produced the vision. "The phantasms of sleep," says Sir Thomas Browne, "do commonly walk in the great road of natural and animal dreams, wherein the thoughts or actions of the day are acted over and echoed in the night." In this case the revelation, besides being unconscionably overdue, was, as we have seen, to a certain extent fallacious, and would perhaps have been classed by that philosopher in the category of dreams out of the Ivory Gate, and visions before midnight.

TOUCHING ONE MAJOR WEIR, A WARLOCK

In rangles round before the ingle's lowe
Frae gudame's mouth auld warld tales they hear
O' warlocks loupin' round the wirrikow,
O' ghaists that win in glen and kirk-yard drear,
Whilk touzles a' their tap, and gars them shak wi' fear.
—"THE FARMER'S INGLE," ROBERT FERGUSSON

THACKERAY ONCE COMPLAINED THAT since the author of *Tom Jones* was buried no writer of fiction has been permitted to depict a man. What, then, must be the plight of him who would show forth a veritable monster? So I have chosen this old-fashioned title as indicating that it is not

here intended to do more than touch the major, and that gingerly, as the phrase goes, and with a nice discretion. But despite these reservations there is much in his strange story worth retelling to such as are interested in the curiosities of psychology, while for the lover of old Edinburgh Major Weir shares with his successor, Captain Porteous, and with Deacon Brodie, the distinction of having preserved, amid so much that has been improved out of existence, if not a local habitation, at least a name.

The major, though in his day a stalwart of the Covenant, and, as Stevenson describes him, "the outcome and fine flower of dark and vehement religion," for obvious reasons finds no place in Presbyterian martyrology. The sources of information regarding his extraordinary career are the official report of his trial in the Justiciary Record; an unpublished MS. of 1670 in the Advocates' Library, Edinburgh, by the Rev. James Fraser, minister of Wardlaw, who knew the major in the flesh; the rare old tract, *Ravaillac Redivivus*, by Dr. George Hickes, Dean of Worcester, published anonymously at London in 1678; and that curious collection of wonderful relations, *Satan's Invisible World Discovered*, by Mr. George Sinclair, "late Professor of Philosophy in the Colledge of Glasgow," and afterwards minister of Eastwood in

Renfrewshire, first printed at Edinburgh in 1685. The professor, in his account of Weir, borrows largely and without acknowledgment from Mr. Fraser's "Providential Passages," as above. Other contemporary references are contained in Lamont's *Diary* and in Law's *Memorials*.

"If I were ever to become a writer of romances," said Sir Walter Scott in 1798, sixteen years before *Waverley*, "I think I would choose Major Weir, if not for my hero, at least for an agent, and a leading one, in my production." Unfortunately he never did so, but in these later days the major, suitably draped, has made his appeal to the general reader in an excellent novel bearing his name by another hand.

Thomas Weir, Scotland's most notable wizard, was born at Kirkton, near Carluke, in Clydesdale, in 1599. His father, Thomas Weir of Kirkton, receives unfavourable mention in the *Memoirs* of the Somerville family as a person capable on occasion of domestic treachery, while his mother, according to the confession of his sister Jean, was a sorceress of repute, who bore upon her brow a witch-mark enabling her to tell "the secretest thing that any of the family could do, though done at a great distance." For the matron's peace of mind it is to be hoped that this gift was rarely exercised. Of the boyhood and youth of Thomas we have no

record, but from the indictment upon which he was afterwards tried we gather that his earlier years were spent with his family in their "House of Wicketshaw." Mention of him occurs in connection with the granting of a conveyance by his father, with his consent, of part of the lands of Waggetshaw in 1632. He is said to have acted as a lieutenant in the Puritan army under Leslie's command sent by the Scots Estates in 1641 to assist in suppressing the Irish Catholics. He was also an officer in the Covenanting forces during Montrose's campaign of 1644–45, as appears from an entry in the register of the estates quoted by Sinclair, when on 3rd March, 1647, the major applied for arrears of pay due to him in respect of "his service as Major in the Earl of Lanark's regiment by the space of twell months, and his service in Ireland as ane Captain-Lieutenant in Colonel Robert Home his regiment by the space of nineteen months." He further craved "that the Parliament wald ordain John Acheson, Keeper of the Magazine, to redeliver to the supplicant the band [bond] given by him to the said John upon the receipt of ane thousand weight of poulder, two thousand weight of match, and a thousand pound weight of ball, sent with the supplicant to Dumfries for furnishing that part of the country." How the petition sped is not recorded.

The year 1649, which saw King Charles the Martyr lay upon the block at Whitehall "that comely head," found Major Weir retired from active service, settled in Edinburgh, and occupying the honourable post of Captain of the City Guard. It has been constantly stated that to this appointment he owed the designation of major, but there is no doubt, as we have seen, he already held that rank. This venerable body of armed police had its origin in the fears besetting the citizens after the fatal defeat of Flodden, but the belief in its extreme antiquity is evidenced by an old Edinburgh legend that some of the Guard were present in Jerusalem at the Crucifixion, and, during the commotion which ensued, carried off from the Temple an original portrait of King Solomon, which long was piously preserved in proof of the tradition! But once in its lengthy and chequered career does the City Guard emerge from mere local annals into the strong light of history under the celebrated captaincy of John Porteous. The events attending the murder of that unhappy officer, and the utter inability displayed by the guardians of the King's peace to discharge their duty upon that occasion, nearly brought about their abolition. Towards the end of the eighteenth century the strength and prestige of the ancient corps had much declined, and lovers of Fergusson's racy

muse will recall his frequent thrusts at "that black banditti, the City Guard." By the year 1817 the last survivors of an outworn system had ceased to struggle against the innovating spirit which permeated the Scottish capital, and, along with many things much worthier of preservation, were swept into the dust-bin of the past.

During his early days in Edinburgh the major lodged for some years with a widow, one Mrs. Grissald Whitford, who dwelt in the Cowgate in a house which, if still standing, cannot now be identified. There, according to Dr. Hickes, "that dishonour of Mankind" had for fellow-boarder the conventicle-preacher, Mr. James Mitchell, assassin and martyr, who was hanged in 1678 for the attempted murder of Archbishop Sharp, as his indictment says, "in the High Street of Edinburgh and in the face of the sun." If we may believe a contemporary rhyming "satyr" on his memory, the character of Widow Whitford's abode rendered it a somewhat singular retreat for a godly young man. Be that as it may, the political and religious views of his companion seem to have stimulated the major's martial spirit, which since the fall of Montrose had no worse opposition to contend with than that of the Edinburgh rabble, for in 1650 he became an eminent promoter of the "Western Remonstrance," though his professional duties

prevented his joining its active supporters in arms. "To these principles he stuck as close as to the Devil himself; insomuch that when the Government of the Church was restored, he avowedly renounced the Communion of it, and endeavoured to widen the Schism to the utmost of his power. He could not so much as endure to look upon an Orthodox Minister, but when he met any of them in the Streets, he would pull his Hat over his eyes in a Pharisaical kind of indignation and contempt."

As might be expected in so uncompromising an adherent of the Covenant, when "dressed in a little brief authority," the major enjoyed to the full the advantage which his office afforded of maltreating such unfortunate Royalists as came within his clutches. He was "very active in discovering and apprehending the Cavaliers and bringing them to be arraing'd and try'd for their lives. He used to insult and triumph over them in their miseries, and persecute them with all manner of Sarcasms and Reproaches when they were led out like Victims to public execution, as many yet alive can testifie to the World. This cruel manner after which he used to outrage the poor Royalists pass'd among the people for extraordinary zeal, and made them consider him a singular Worthy whom God had raised up to support the Cause." But the proudest

moment of the major's life was when fate delivered into his official hand his old enemy Agag, the gallant James Graham, whom after his capture in the north, was brought to Edinburgh to die. The warding of prisoners awaiting trial and attendance at their execution were part of the Town Guard's duties. How ably these were discharged by Major Weir in this instance the following contemporary account will show:—"The barbarous Villain treated the Heroick Marquess of Montrose with all imaginable insolence and inhumanity when he lay in Prison; keeping him in a Room in which was no other light than that of a Candle, and his lighted Tobacco, which he continually smoked with him, tho' the Marquess had an aversion to the smell of it above anything in the World." That Major Weir was a heavy smoker supplies an unexpected touch of nature which his Satanic personality could ill afford so to pervert. "Nay," continues our author, "he would even disturb him in his Devotions, making his very calamities an Argument that God as well as man had forsaken him; and calling him Dog, Athiest, Traytor, Apostate, Excommunicate Wretch, and many more such intolerable names." Thus did the major exult after his fashion over the fate of the great marquess, whom later he escorted to the scaffold; and twenty more years of his own flagitious life were yet to run

before the fire was kindled for himself upon the Gallow Lee.

Prominent in any plan of older Edinburgh is the crooked line of the West Bow, which ran abruptly down from the head of the High Street, whence it formed the main thoroughfare to the Grassmarket in the valley on the south. Of this curious zigzag descent, which is said to have been one of the most ancient and characteristic streets in the old town, naught but the name has escaped the "improving" mania of our forefathers. The Bow was long the peculiar domain of the white or tinsmiths, and so godly was the repute of its indwellers at the time of which we write, that they had earned for themselves the title of the Bowhead Saints. The denizens of this favoured quarter must have hailed with holy joy the arrival among them of Major Weir, when, on an unascertained date, he withdrew his patronage from the dubious widow of the Cowgate and pitched his tent within "the sanctified bends of the Bow."

The records of the Town Guard preserved in the City Chambers unfortunately do not extend so far back as to include the period of the major's service, which seems to have lasted for at least two years. After his resignation or dismissal, having ceased to interfere in the worldly affairs of his fellow-citizens, he had the more leisure to devote himself to their

spiritual concerns. Then, as now, people were to a large extent appraised at their own valuation, and as the major was an imposing personality in more senses than one, and laid claim to phenomenal sanctity, his pre-eminence among the Bowhead Saints was speedily assured. "He became," says Mr. Fraser, "so notoriously regarded among the Presbyterian strict sect, that if four met together, be sure Major Weir was one." His deportment, we are told, was marked by a formal gravity "and demureness in his looks," a prodigious memory enabled him to quote Scripture with fluency and ease, while his gift of extempore prayer was deemed miraculous, both before and, as we shall see, after his exposure. He had acquired, says Dr. Hickes, "a particular gracefulness in whining and sighing above any of the sacred clan, and had learn'd to deliver himself upon all serious occasions in a far more ravishing accent than any of their Ministers could attain unto." Soon no "house-conventicle" of the elect could with propriety be held unless the wonderful major presided, and indeed so great became his popularity that it was said, "Happy was the Man with whom he would converse, and blessed was the Family in which he would vouchsafe to pray." But the business instincts of this inspired professor were too shrewd to let custom stale his infinite variety. He would

pray only in the families of such as were "Saints of the highest Form," with the gratifying result that "the Brethern and Sisters of those Precincts would strive who should have him to exercise in their Houses," and "To meet Major Weir" would insure the acceptance of any invitation. Gradually the fame of his signal gifts outgrew the narrow limits of the Bow, and people would come forty or fifty miles to have the happiness to hear him pray. "Conceived prayer" was the major's specialty. He never undertook to preach, "for fear of invading the Ministerial Province," which certainly would have kindled the wrath of the Kirk. The fact that the supplicant "could not officiat in any holy duty without his Rod in his hand, leaning upon it," was remarked at the time, but the full extent of the major's dependence upon his famous staff was not appreciated till later. He was thought more angel than man, says the contemporary minister, Mr. Fraser, whose criticisms are perhaps not without some slight leaven of professional jealousy, and by some of the holy sisters was happily named Angelical Thomas. The same authority gives us the only impression we have of Major Weir's personal appearance, a sketch which took captive the imagination of Stevenson: "His garb was still a cloak, and somewhat dark, and he never went without his staff. He was a tall black man,

and ordinarily looked down to the ground; a grim countenance, and a big nose."

We have two pictures of the tenement hallowed by the occupancy of this choice spirit, which of old rose upon the east or left-hand side of the street at the first turn in descending the West Bow, and was long known as Major Weir's *Land*—the quaint etching by Skene of Rubislaw, representing the supposititious turret of the major's dwelling as viewed from the Bow, and the bald little woodcut in Chambers's *Reekiana*, showing the actual house, seen from the inner court. The entrance to the front building from the street was by a stone turnpike stair—once so common a feature of Edinburgh architecture—the door of which bore the inscription, "Soli deo honor et gloria," with the date 1604; but a low vaulted *transe* or passage immediately adjoining led through the tall *land* to a narrow court behind, in which, sinister and solitary, stood the wizard's dread abode. It is said that he had cast a spell upon the neighbouring turnpike stair, despite its pious motto, to the effect that whoso attempted the ascent felt as if, instead of mounting, he were descending the steps. "No other story of witchcraft and necromancy," says Sir Daniel Wilson, "ever left so deep-rooted an impression on the popular mind as that of Major Weir; nor was any spot ever more celebrated in the annals

of sorcery than the little court at the head of the Bow, where the wizard and his sister dwelt."

As to this unfortunate woman, criminal and lunatic, we must now say a word. Her Christian name has been a matter of dispute. Sinclair and Law refer to her as Jean, which Dr. Hickes renders Jane for his English readers; Fraser, the contemporary authority before quoted, calls her Grizel; but she was indicted and tried in the name of Jean Weir, which settles the point. It is generally said that the major never married, but from the record of his trial we find that he was formerly married to a widow named Mein, who had a daughter, Margaret, by her first husband. The major's behaviour to his stepdaughter was the subject of one of the charges in his indictment. Probably he had been long a widower, and for many years his sister lived with him and kept his house. In view of their subsequent trial it is necessary to add that their relations were those of Hilarion and Palmyre Bouteroue, in Zola's *La Terre*. Jean was an indefatigable spinster. Day by day during her evil life the hum of her necromantic spinning vibrated through the dark chambers, and for years after her shameful death the midnight wayfarer down the Bow would be arrested at the Bends by the rhythm of that ghostly wheel.

Few men are so individual as to present on in-

spection a single personality; in the most blameless of Jekylls there too often lurks some strain of the indigenous Hyde—"which makes this speckled Face of Honesty in the World." Like the celebrated Deacon Brodie, Major Weir's life was lived variously in diverse sorts of company; but whereas the deacon was merely a capable cabinetmaker by day, and by night but an indifferent burglar, the major's complex character enabled him to play simultaneously three distinct parts, each of which he sustained for many years with equally marked success. With Weir the saint we have already dealt, of Weir the sinner it is not proposed to treat, but Weir the warlock has still to be considered. Of the manner in which the major in his second rôle abused the confidence of the holy sisters as their spiritual director, of his more recondite gallantries and astral amours, and of his other manifold and great impieties we cannot here speak, but one incident may be referred to as explaining the immunity from punishment which he so long enjoyed. It appears upon his own confession that a certain damsel, in consequence of what she observed of his conduct in a field "at New Mills in the West Country," whither the major had ridden from Edinburgh "to a solemn meeting," complained of him to Mr. John Nave, the minister of New Mills, at whose instance he was brought

back to the place by some soldiers, "but was there dismissed for want of further probation [proof]; and the woman that delated him for the fact near New Mills was, by order of the magistrates of Lanark, whipped through the town by the hand of the common hangman, as a slanderer of such an eminent Holy Man"! Her fate was little calculated to encourage talebearing to the saint's detriment. Twenty years later, however, the lady had her revenge, when she gave evidence for the prosecution at the major's trial, and she was probably an interested spectator of the subsequent ceremony at the Gallow Lee, of which he was the central figure.

The ability displayed by Major Weir in his several capacities was explained as the result of a compact with the Prince of Darkness, who, in consideration of the price customary in such bargains, had engaged to warrant the other party to the transaction against all mortal dangers "except one burn." How the devil, according to his wont, paltered with the major in a double sense will presently appear. In support of this theory Sinclair records that upon one occasion during Weir's captaincy of the Town Guard, while going his nightly rounds to inspect the ports—the old city gates of mediæval Edinburgh—he found the waiters (gatekeepers) at the Nether Bow absent from their post and the port unguarded. The major

unearthed the delinquents from an adjacent cellar, where they were "taking a cup of Aile," and sharply reprimanded them for their neglect of duty. They pleaded as excuse that they had but abandoned their charge for the moment in order to have a drink "with their old Friend and Acquaintance, Mr. Burn." "At which word," continues the narrator, "he started back, and casting an eye upon them, repeated the word 'Burn' four or five times." The major, white and trembling, retired precipitately home, and kept the house for some weeks afterwards. It was also observed that when going in company to Liberton "he shunned to step over that Water-brook which is ordinarily called Liberton Burn, but went about to shun it." Evidently the major believed that by taking thought he could still get the best of the bargain, but his spoon was not long enough for those who, as warned by the proverb, would sup with the Enemy unscathed.

The end came with startling and dramatic suddenness. On a certain day of obligation among the Bowhead Saints, in the early spring of the year 1670, the gloomy audience chamber of their high priest was thronged by a great gathering of the faithful. The company included a brother of Professor Sinclair, the discoverer of Satan's invisible world, one "Maister John Sinclaire," a conventicle-minister of Ormiston, who probably attended in the hope

of gleaning some professional hint from the methods of the popular prophet. Major Weir was then in the seventieth year of his treble life, a failing man, long "harassed below a mountain of duplicity," and still pursuing in despite of time the course of his incredible vices. The preliminaries over, amid an inspiring hush Angelical Thomas rose to address his complacent disciples for the last time. Whether the "Magical Staff," upon whose diabolic aid his eloquence depended, suddenly failed him; whether his conscience, seared by unnumbered crimes, suffered some tardy pang; or whether, as is most likely, his reason reeled beneath the intolerable burden of such prolonged hypocrisy, we cannot tell; but, instead of the usual "Enthusiastical phrases, Extasies, and Raptures" wherewith he was wont to transport his silly flock, the unhappy man poured forth a full confession "of his particular sins which he was guilty of, which bred amazement to all persons, they coming from a man of so high a repute of Religion and Piety."

Picture the scene in that crowded upper room, the theatre of so many former triumphs—the smug self-righteousness of those burgher faces smitten as by a thunderbolt into horror and dismay, the once angelic voice offending silence with the items of that monstrous category, while spurred by some unknown power the terrible old man stripped off

relentlessly, rag by rag, the cloak of his spurious sanctity. How the ears of the holy sisters must have tingled! Idols have been cast down ere now by the devotees of rival gods, or have fallen by mere neglect of their own worshippers, but here was one voluntarily overthrown, and shattered into nameless fragments by his single act.

"Before God," cried the miserable wretch, "I have not told you the hundred part of that I can say more, and am guilty of!" But the congregation had heard enough. Measures were at once concerted "with all possible care and industry" to bury the knowledge of this "confounding scandal" within the bosom of the elect. It was given out that the saint had been seized with illness—and little doubt he was a broken man. For several months the affair was screened successfully from the profane. The "godly plants of the Bowhead" had now the whip-hand of their oracle, and the reputation of the Bow might yet be saved. But the major's infernal creditor was not to be balked of his due so easily. One of the ministers—was it he of Ormiston? —actuated, as regrettably appears, by professional spite, denounced the unveiled prophet to Sir Andrew Ramsay of Abbotshall, then Lord Provost of Edinburgh, who in the following year became a Senator of the College of Justice. His lordship, "judging humane nature uncapable of such horrid

crimes as the Minister told him the Major had confessed," considered the case as one calling rather for medical than criminal treatment. He therefore sent certain physicians of his acquaintance to visit the patient "and Physick him for his distempered Brain." The doctors, however, having seen him, reported to the provost that the major was in good health, "that he was free from Hypocondriack Distempers," and that his "Intellectuals" or mental faculties were perfectly sound. They found him suffering from "only an exulcerated Conscience," which, in their opinion, could not be relieved till he was brought to justice, "as with cryings and roarings he desir'd to be." The provost was still unwilling to believe the worst. He requested "some Conventicle-Ministers" to inquire into the major's condition and to report. These spiritual physicians, "finding it was impossible to disguise the matter which now was Town-talk," concurred in the views already stated by their medical brethren: "The terrors of God which were upon his Soul urged him to confess and accuse himself." Official ignorance of the scandal could no longer be maintained, so the provost sent the Town Guard to apprehend their old officer and his sister Jean, who was implicated in his confession, and to carry them both to the Tolbooth, the Bastille of Auld Reekie. The arrests

were effected "in the night time," in presence of two of the magistrates. When the prisoners were seized, Jean urged the bailies to secure the major's staff, as, if he once had it in his hand, "he would certainly drive them all out of doors, notwithstanding all the resistance they could make." So the wizard's wand was duly impounded, as also were certain sums of money found in the house, wrapped "in several clouts" (rags).

"This Magical Staff," says Dr. Hickes, "was all of one piece, upon which were Engraved certain Symbols in the shape of Centaures, with a crooked head of Thorn-wood. She said he received it of the Devil and did many wonderful things with it; particularly that he used to lean upon it in his Hypocritical Prayers; and after they were committed she still desired it might be kept from him, because if he were Master of it again he would certainly grow obdurate, and retract the Confessions he had so publickly made. Apollonius Thyaneus had such a Magical Staff as this, which I am apt to believe was a Sacramental Symbol which the Devil gave to the Major, and the Court were not without some apprehensions of it for it was ordered by the judges to be burnt with his Body; and it was afterwards observed that his body did not fall into the Flames till that staff had first done so." The major, when in prison,

acknowledged his indebtedness to this familiar, and confessed that he never "bow'd the knee at his own or other men's prayers," but stood always leaning upon his staff, a practice which had been long noted by his disciples.

When they had seen their prisoners safely under lock and key, the two bailies adjourned to a tavern in the West Bow, taking with them the major's money, which was there put into a bag and the clouts thrown into the fire. These, "after an unusual manner, made a circling and dancing" as they burned. Another cloth containing "a certain root," also found in the warlock's den, was similarly disposed of, "which circled and sparkled like Gunpowder, and passing from the Funnel of the Chimney, it gave a crack like a little Cannon, to the amazement of all that were present." The money was taken home by one of the bailies and laid by in a closet, but the family could get no rest "for a terrible noise within the Study like the falling of a house," so the accursed coins were sent to the other bailie's, where they caused a like disturbance. Probably he broke the spell by spending them, for we hear no more of the matter.

While the major lay in the Tolbooth awaiting his trial, all sorts of clerical artillery was brought to bear upon him, from the great guns of the establishment, like my Lord Bishop of Galloway and

the Dean of Edinburgh, to irregular sharpshooters of his own persuasion. But the major since his downfall was indifferent even to sectarian shades. "Sirs," said he to his reverend visitors, "you are now all alike to me." He was willing enough to horrify them with personal reminiscences, but firmly withstood their exhortations to repentance, remarking that he was already damned, and that the united prayers of all the saints in heaven and earth would be vain if offered in his behalf. "One minister (now asleep), asking him if he should pray for him, was answered, 'Not at all.' The other replied in a kind of holy anger, 'Sir, I will pray for you in spite of your teeth and the Devil your master too.'" Finally the prisoner thus adjured the well-meaning divines: "Torment me not before the time"; and they threw up the case as hopeless. Law says in his *Memorials* that the major's obduracy was due to characteristic craftiness; "that now since he was to goe to the Devil he would not anger him."

Jean Weir, though equally impervious to ghostly counsel, was more communicative than her inscrutable brother as to their Satanic dealings. She had inherited, she said, her witchcraft from her mother, together with an unholy mark upon her brow, which she exhibited to the ministers then present. "She put back her head-dress, and seem-

ing to frown, there was seen an exact Horse-shoe shaped for nails in her wrinckles"—"terrible enough, I assure you, to the stoutest beholder," says an eye-witness. She added that her brother having on one occasion "desyred her to claw his back," she found upon his shoulder "that which they call the Devil's Mark." Sir Walter Scott, by the way, borrowed Jean Weir's horse-shoe frown for *Redgauntlet*, and bestowed the major's name upon Sir Robert's "great, ill-favoured jackanape." Jean admitted that she and her brother had made a compact with the devil, "and that on the 7th of September, 1648, they were both transported from Edinburgh to Musselburgh and back again in a Coach and six Horses, which seemed all of fire, and that the Devil then told the Major of the defeat of our army at Preston in England, which he confidently reported several days before the news had arrived here"—a prophecy the fulfilment of which much enhanced the major's reputation with the godly. Other accounts refer the major's special intelligence to the battle of Worcester, with which, however, Jean's date does not agree. "She knew much of the inchanted Staff, for by it he was enabled to pray, to commit filthinesse not to be named, yea even to reconcile Neighbours, Husband and Wife, when at variance." This latter property must have proved a valuable antidote to

the major's personal influence in the marital affairs of his flock, which tended rather in the opposite direction. She further confessed "that when she keeped a school at Dalkeith and teached childering"—how Mr. Squeers would have appreciated such "a educator of youth"!—a tall woman came to her house when the children were there, with the request that she should "spick for her to the Queen of Fairie, and strik and battle in her behalf with the said Queen." This royal lady "is that very Mab" who, under the style and title of Quene of Elphane, figures for the first time in our criminal records at the trial of Alison Pearson for witchcraft on 15th May, 1588. Next day a little woman came, who gave the schoolmistress "a piece of a tree or root"—perhaps the identical root whose explosion had so amazed the bailies—telling her that as long as she kept it "she would be able to doe what she should desyre." After certain necromantic ceremonies, not the least important of which was the delivery to her visitant of "all the silver she hade," the woman departed, and Jean, sitting down to her spinning-wheel, "did find more yearn upon her pirne [spindle], and good yearn, nor [than] she thought could be spun in so short a time." Yet, despite this miraculous gift, the devil cheated her after all, as he did the major, "for her Weaver could not make

cloath thereof, the yearn breaking or falling from the Loom."

On Saturday, 9th April, 1670, the wicked old couple were placed at the bar of the Justice Court before "that learned Civilian, Mr. William Murray, and Mr. John Preston, Justice-Deputes." The prosecution was conducted by the Lord Advocate, Sir John Nisbet of Dirleton, the author of the historic *Doubts*, but no counsel seems to have been bold enough to undertake the defence of the prisoners. They were tried together upon separate indictments, that of the major laying more stress upon his dealings with creatures of flesh and blood than with the occult powers of darkness; his sister Jean, in addition to another crime, was charged with specific acts of sorcery. Both libels having been read and duly found relevant, "The King's Advocate caused interrogate the Major judicially anent his guilt, who answered, he thinks himself guilty of the foresaid Crimes and cannot deny them; and the King's Advocate takes Instruments that he refuses to answer posatively." In view of this, as there was nothing against the pannels except their extrajudicial confessions, the Lord Advocate proceeded to lead evidence for the Crown. Four witnesses deponed that they were present when Major Weir made his memorable statement

and heard him confess the crimes libelled, while many others gave damning testimony to his actual misdeeds. The Reverend Mr. Sinclair, who had been throughout very busy in the case, swore that the major sent for him from the Tolbooth "of purpose to confess his sins to him," and had also solicited his prayers, which, in view of other evidence as to the major's then frame of mind seems, to say the least, unlikely. A new item of iniquity was alleged to have been elicited from the penitent by this conventicle-confessor, namely, "that he had converse with the Devill in the night time." Arnot, commenting in his *Criminal Trials* on this incident, justly remarks, "I leave it to casuists in religion to determine as to the efficacy of auricular confession in the salvation of the soul; but I cannot help thinking that for a priest to reveal this confession in a criminal court to the destruction of the body, deserves to be placed nigh at the top of the scale of human depravity." In the end the major, seeing that the game was up, judicially acknowledged the truth of the charges. His sister followed suit, and confessed to the Court "all the Sorcerys as in the lybell." So the jury found them both guilty, and sentence of death was pronounced as follows: Major Weir to be taken on Monday the 11th inst. to the Gallow Lee between Leith and Edinburgh, and there, "betwixt two and four hours in the after-

noon," to be strangled at a stake till he was dead and his body to be burnt to ashes; Jean Weir to be hanged at the "Grass Mercate of Edinbr." on Tuesday following. "Which were accordingly execute," as we learn from a contemporary note on the record, "and the said Major not being able to travell for age, was dragg'd on a sled, the horse being led by the hangman, and died in despair, declaring that he had no hopes of mercy; and the woman died folishly." "Thus," observes the Reverend Robert Law, "did the holy justice of God eminently shyne furth in detecting such wreatched hypocrites."

The Gallow Lee, the scene of the major's expiation, was a spot situated upon the declivity of Greenside in Leith Walk, opposite the end of York Place, and lying towards the Calton Hill. The parish church of Greenside now occupies the site. It is recorded that when the rope was about his neck to prepare him for the fire, for the last time the major was implored to pray. "Let me alone," he replied: "I will not. I have lived as a Beast and I must die as a Beast." Such was Major Weir's epitaph. "In the flames along with him," says Sinclair, "was consumed his conjuring staff, carved with heads like those of Satyrs, without which he could not pray nor work many of his other diabolical feats. Whatever incantation was in it, the

persons present own that it gave rare turnings and was long a-burning, as also himself." "I have been told," adds Dr. Hickes, "by very credible persons that the Body of this unclean Beast gave manifest tokens of its impurity . . . as soon as it began to be heated by the Flames"—from which the horrid inference has been drawn that the criminal was burned alive.

The major at least paid the last penalty with composure; not so his sister, who, as has been said, "died folishly." After his execution was over, one of the ministers waited upon her in the Tolbooth to cheer her with an account of the ceremony. She seemed more concerned, however, as to the fate of the staff, which, when she heard, "notwithstanding of her age"—she was some ten years her brother's junior—"she nimbly and in a furious rage fell on her knees, uttering words horrible to be remembered." Some inquisitive bystanders pressed for certain particulars of her crime, but the minister prudently stopped her disclosures, observing that the speculation of such iniquity was in itself a sin. She intimated to him that in the morning she proposed to die "with all the shame she could," which at the time the good man mistook for a sign of contrition. Next day in the Grassmarket, however, it appeared that her words bore a meaning less commendable. Lamont, the contemporary diarist,

records, "On the scaffold she cast away hir mantell, hir gown tayle, and was purposed to cast of all her cloaths before all the multitude; bot Bailie Oliphant, to whom the business was intrusted, stoped the same and commanded the executioner to doe his office. While he was abowt to throw hir ovir the leather [ladder], she smote the executioner on the cheike; and hir hands not being tyed when she was throwen ovir, she labored to recover hirself, and put in her head betwixt two of the steps of the leather, and keiped that powster for atyme, till she was put from itt." These shocking details are here transcribed in order to remove from the reader's mind any shadow of doubt as to the madness of this unhappy creature. Major Weir, however, was possessed by a more evil spirit. For him, in view of the physicians' verdict, the plea of insanity in the general sense cannot be urged, except in so far as in the light of modern science all such criminals may be regarded as insane.

The abode of the wizard in the West Bow, which survived its owner by more than two hundred years, stood for upwards of a century after his death dark and tenantless in the midst of the superstitious city. Its reputation as a place of dread was early established. "The facts struck the public fancy," says Stevenson, "and brought forth a remarkable family of myths." One of the first

and quaintest of these is the story of a certain "gentlewoman" who, attended by her maid with a lantern, was returning at midnight from the Castle Hill, "where her husband's niece was laying-in of a child." About the Bowhead she perceived "three Women in windows, shouting, laughing and claping their hands"—an unseemly but not necessarily supranormal sight. The gentlewoman, however, "went forward" and fared worse, for just at Major Weir's door "there arose as from the street a Woman above the length of two ordinary femells." The courageous dame, "not as yet excessively feared," ordered her maid to approach the phantom, "if by the Lanthorn they could see what she was"; but as they advanced "this long-legged Spectre was still before them, moving her Body with a vehement Cachinnation, a great unmeasurable Laughter." In this order they descended the slope "till the Giantiss came to a narrow lane in the Bow, commonly called the Stinking-closs, into which she turning, and the Gentlewoman looking after her, perceived the closs full of flaming torches and as it had been a great multitude of People, stentoriously laughing and gapping with Tahies of laughter." This was too much for the lady's nerves, and followed by her maid she fled home, where she related to the family, "but more passionately to her husband," her terrible experi-

ence. Perhaps she had relied upon having his manly escort, the rather that it was upon his relative's affair she had been abroad so late.

The winds that swept over Greenside from the "Craigs of Caltoun," and scattered the ashes of the warlock and his wand upon the Gallow Lee, could not cleanse Auld Reekie of their unholy memories. As time went on, these assumed ever more marvellous proportions in the public mind. The "Magical Staff," it was said, used formerly to run upon its master's disreputable and secret errands, and was wont of old to answer the long-closed door, behind which it still lurked, a diabolical porter, to perform its ancient functions; and when in the mirk night the wicked major would sally forth on nameless business, it flamed before him up the Bow like some infernal link-boy. The major himself, in spite of stake and faggot, became, in Chambers's phrase, "the bugbear of the Bow." Jovial roisterers from Lawnmarket *howffs*, negotiating in the small hours that critical descent, beheld the wizard, mounted on a headless charger, burst from the Stinking Close and gallop furiously away "in a whirlwind of flame." Decent burgesses, returning with their wives from solemn or sociable meeting, saw the windows of the deserted house ablaze with lights as for some eldritch festival, while, to the accompaniment of unearthly music, fearful shapes flitted

wildly athwart the broken panes; and trembled to think, as they hastened by to their respectable beds, what manner of company the major and his sister kept that night. But perhaps the most popular of these manifestations, as it was the legend longest associated with the locality, was that which, in the chill unchancy hour before the dawn, startled the sleepers of the Bow, when down that ill-paved alley, with clatter of hooves and groaning axles, thundered the six coal-black horses and fiery coach of the "Muckle Deil himsel'," and drew up with a resounding crash before the warlock's door. Then would some bolder spirit rise, and, peering awfully into the shadows of the street, behold through the flaming glasses the dead damned face of Major Weir. This agreeable fancy for many years survived in nursery lore, and was often told to Stevenson's father in his childhood by judicious guardians, as his son relates.

"About fifty years ago," says Chambers, writing in 1869, "when the shades of superstition began universally to give way in Scotland, Major Weir's house came to be regarded with less terror by the neighbours, and an attempt was made by the proprietor to find a person who should be bold enough to inhabit it." Such an adventurous tenant was found in one William Patullo, an old soldier of reprobate and drunken habits, who, professing to

hold materialistic views, but probably tempted by the lowness of the rent, agreed to beard the warlock in his den. The news excited much interest in the neighbourhood, and the issue of the hazardous experiment was eagerly awaited. Accordingly, on the appointed day Patullo and his wife, with their exiguous chattels, "flitted" into the haunted house. That night, the old soldier's scepticism notwithstanding, the couple lay long awake. When the last embers of their scanty fire were cold, and silence and darkness held possession of the Bow, "they suddenly saw a form like that of a calf, which came forward to the bed, and setting its fore-feet upon the stock [bed-foot] looked steadfastly at the unfortunate pair." After contemplating them thus for some time, the vision gradually vanished. This emanation from the major's past was too much even for the godless old campaigner; next day "that eligible family residence" was again to let, and remained so for another half-century.

In later years it was occupied at divers times, not inappropriately, as a brazier's shop and as a magazine for lint, but no human family ever sought to make a home beneath that accursed roof. At length there came a time when Satan was hoist with his own petard. In the spring of 1878 the Improvement Commissioners, whom he had long so happily inspired, rebelled against him, and with

cynical ingratitude razed his infernal fortress to the ground.

Since that date the peace of Edinburgh has not been broken by the visible presence of the evil twain, but Mr. Lang informs me (1912) that three years ago Major Weir and his sister were seen again in Lanarkshire, in the haunts of their uncanny childhood.

THE ORDEAL OF PHILIP STANFIELD

In a secret Murther, if the dead carkasse be at any time thereafter handled by the Murtherer, it will gush out of blood; as if the blood were crying to Heaven for revenge of the Murtherer.

—"DÆMONOLOGIE," KING JAMES THE SIXTH

AS ONE OF THE FOUR PARRICIDES RE-corded in Scottish criminal annals, and the last person convicted in that country upon the ancient ordeal of *Bahr-recht* or Law of the Bier—the bleeding of the slain corpse at the murderer's touch —Philip Stanfield has attained some eminence of

infamy. He has pointed a moral for Wodrow and furnished footnotes for Sir Walter Scott, who doubted the evidence of his guilt. He has his part in Howell's dismal repertory. More recently he has adorned a tale by Mr. S. R. Crockett, in which he plays the villain for the circulating libraries at some sacrifice of truth, and, despite an undeniable gibbet and dismemberment, continues by the author's favour his criminous career. The contemporary report of his trial at Edinburgh in 1688 is appreciated by the bibliophile, but to the general reader the facts of his strange story are unknown. It is a tragedy of old years of blood and superstition; grim, indeed, but with here and there quaint glimpses of the ghostly marvellous, wherein we perceive malice domestic incite to midnight murder, and in the end the guilty designated by the manifest finger of God.[1]

Philip Stanfield—the name is variously given as Stansfield, Standsfield, and Stamfield—was the eldest son of Sir James Stanfield of New Mills, in East Lothian. A Yorkshireman by birth, the elder Stanfield is said to have held the rank of colonel on the Parliamentary side in the Civil War. He settled in Scotland after Cromwell's victory at

[1]Readers of *Tom Sawyer* will recall that "Injun Joe helped to raise the body of the murdered man . . . and it was whispered through the shuddering crowd that the wound bled a little!"—E. P.

Dunbar, having purchased certain lands lying on the south bank of the river Tyne, a mile east of Haddington, formerly belonging to the local abbey. There he established a cloth manufactory upon the site, some thirty years earlier, of a similar undertaking. Colonel Stanfield's enterprise enjoyed the patronage of the Protector, and after the Restoration he was further encouraged by divers privileges granted to him by the Scots Parliament. Later he received from Charles II a knighthood, presumably in recognition of his mercantile rather than his military achievements. In 1681, with the approval of James, Duke of York, then resident in Scotland, proposals were made for establishing a cloth manufacturing company on a large scale, to compete with the English industry. Among the promoters of this patriotic scheme was Sir James Stanfield, and from him the new company acquired upon liberal terms a lease of "that great manufactory stone house on the south side of the village of Newmylnes," with the offices thereof, "which are many, great and spacious."

At this time Sir James was a wealthy man. The cloth manufactory had prospered, and we learn from the decisions of the Lords of Session that in addition to his estate of New Mills he owned other lands at Hailes and Morham in the same county. But he was more blessed in his business

than in his home. Lady Stanfield was no ideal helpmate, while Philip, his son and heir, was a prince of prodigals. Sir James complained to his friends that "he had no comfort in his wife and family," whom he described as "very wicked," observing that it was "sad that a man should be destroyed by his own bowels." His chief cause of anxiety was the conduct of his elder son, of whose misdeeds a lurid account is given in the indictment upon which Philip was convicted of the murder of his long-suffering sire. Apart from that catalogue of iniquities we know little of Philip's youth, but an anecdote preserved by Wodrow shows him to have been a student of St. Andrew's University. While at that seat of learning, he one day attended the preaching of John Welsh, the great-grandson of Knox, and, disliking his doctrine, "threw somewhat or other at the minister, which hit him." Mr. Welsh promptly prophesied that "there would be more present at his [Philip's] death than were hearing him preach that day." This retort seems to have been a favourite one with outraged prophets. Similar predictions are recorded to Captain Porteous and others, the seers being justified by the event.

It is stated in the indictment that, notwithstanding the advantages of an excellent education, Philip, "being a profligate and debauched person, did committ and was accessory to several notorious

villainies both at home and abroad." He had, it is said, "entered a souldier in the Scots Regiment," but most of his time was spent in retirement in the Marshalsea and the public prisons of Brussels, Antwerp, Orleans, and other places on the Continent. At Treves he was condemned to death, but managed to escape. From these retreats he was time and again released by his father's liberality; but so far from exhibiting either gratitude or sign of amendment, it was his habit "most wickedly and bitterly to rail upon, abuse, and curse his natural and kindly parent," and on two occasions he actually attempted his father's life. On the first of these he "did chase and pursue his father upon the King's highway at Lothian-burn, and did fire pistols upon him"; on the second he "did attempt to assassinate his father for his life at Culterallors," by similar methods.

Some years before the murder, Philip, married, was living with his wife at the house of New Mills, as appears from a case reported by Lord Fountainhall, a contemporary judge. In 1682 an action was raised in the Court of Session by an Edinburgh merchant against Philip, for payment of £1100 Scots for clothes "taken off" by himself and his wife in two years' time. Sir James was also called as defender on the ground that although his son was major and married at the time of the furnish-

ing, yet the young couple were then living *in familia* with him, and had no separate estate, so that he was bound to clothe and aliment them. The Lords decerned against Philip, but assoilzied (discharged) the father, "because he made it appear that he had paid 5000 merks of debts contracted by Philip during that very space, and that his son was a prodigal waster."

Sir James, finding his pecuniary affairs embarrassed by the unnatural encroachments of his family, proposed, in 1686, to sell "the houses and lands of Newmilns" to the cloth company. The negotiations were interrupted by his death in the following year, but were shortly thereafter completed. Meanwhile, he had decided to disinherit the peccant Philip in favour of John, his second son. But Jacob, of whom "he had some comfortable hopes," was little less unsatisfactory than Esau, and "several times came in drunk as the other."

In this unhappy situation it is not surprising that Sir James at times exhibited a certain lowness of spirits, which the wicked Philip artfully attributed to mental derangement. So far, however, from being driven mad by his troubles, it appears that Sir James bore his afflictions with fortitude, and though he suffered in mind, body, and estate, his reason was unimpaired.

Matters reached a crisis in November, 1687.

On Saturday the 27th of that month Sir James Stanfield rode into Edinburgh for the last time, and having transacted his business there, returned in the evening to his house of New Mills, accompanied by a friend, one John Bell, "minister of the Gospel, aged 40 years," who was to occupy the pulpit of the neighbouring church at Morham next day. This divine was probably Mr. John Bell, parish minister of Gladsmuir, the learned contemporary author of certain treatises on witchcraft. They supped together after their long ride, and according to Mr. Bell Sir James's discourse was rational and pertinent, both before and after supper. At ten o'clock Sir James, having conducted his guest to his chamber, went to bed. The minister's experiences of the night must be described in his own words: "I declare that having slept but little, I was awakened in fear by a cry (as I supposed), and being waking, I heard for a time a great dinn and confused noise of several voices, and persons sometimes walking, which affrighted me (supposing them to be evil wicked spirits); and I apprehended the voices to be near the chamber-door sometimes, or in the transe [passage] or stairs, and sometimes below, which put me to arise in the night and bolt the chamber-door further, and to recommend myself by prayer, for protection and preservation, to the majestie of God; And having

gone again to bed I heard these voices continue, but more laigh [low], till within a little time they came about to the chamber-window; and then I heard the voice as high as before, which increased my fear, and made me rise again to look over the window, to see whether they were men or women; but the window would not come up for me, which window looked to the garden and water, whither the voices went on till I heard them no more; only towards the morning I heard walking on the stairs, and in the transe above that chamber where I was lying. I told the women who put on my fire in my chamber that Sabbath morning that I had rested little that night, through dinn I heard; and that I was sure there were evil spirits about that house that night."

Next morning Sir James Stanfield was missing. The maid-servant found his bed "better spread up than it used to be, and the curtains more drawn about it."

Some distance behind the house of New Mills the river Tyne flowed beneath a steep bank upon the south. Early that Sunday morning a stranger named John Topping, going from Monkrig to the village by the water-side, saw Philip standing "at the brink of the brae," his eyes fixed upon the body of a man floating in the pool below. Topping asked whose body was in the water, but received no reply; when he came to New Mills he learned the

answer to his question. About an hour after daybreak Philip entered the minister's chamber and inquired if he had seen his father that morning, adding that he himself had been seeking him by the banks of the water. Mr. Bell "having gone without the gate and up the cawsey that leads to the manufactory, one came running and said they had found Sir James in the water." The minister then left to perform his Sabbath duties at Morham, remarking, "If the majestie of God did ever permit the Devil and his instruments to do an honest man wrong, then Sir James Stanfield has received wrong this last night, which the Lord will discover in his good time."

Umphray Spurway, the manager of the cloth mills, was a fellow-countryman of Sir James. Their relationship was intimate and friendly, and Umphray was often consulted by Stanfield in his unhappy domestic troubles. Apprised of his master's disappearance, he was leaving the mills to go up to the great house when he encountered Philip. The latter expressed wonder at the cause of his father's "discontent, that he should thus leave his lodgings"; whereupon Umphray plainly told him that in his view his (Stanfield's) family were responsible for what had happened. The search was then begun, and presently Sir James's body was discovered floating face downwards, among the

ice in a pool of still water some five feet deep "a little by-west the town [village]." It was observed at the time that the ground at the water's edge nearest the body was "all beaten to mash with feet and the ground very open and mellow, although a very hard, frosty morning." When the dead man was carried by his servants to his own house, Philip met the bearers in the doorway, and "swore that the body should not enter there, for he had not died like a man but like a beast." It was accordingly deposited in an outhouse.

"The presumptions here were very pregnant against Philip," says Fountainhall, "for though other children in such dubious cases do ever ascribe their father's death to murder, yet he, being asked his opinion, asserted he thought he was not murdered, but rather took pains to persuade all that he was *felo de se* and his own executioner."

Philip's expressed opinion that Sir James had taken his own life was at first generally shared. Within an hour of the recovery of the body, the son ransacked his father's repositories, secured his valuables, and, appropriately enough in the circumstances, removed the silver buckles from the dead man's shoes and put them on his own.

When Mr. Bell returned to New Mills on the Sunday evening, he was informed by Philip that he had advertised several friends in Edinburgh of

what had happened, and was expecting their arrival that night. The minister commended his prudence, deeming it highly desirable that the body should be "sighted" by the physician and friends of the deceased, for, from his midnight experiences, he was inclined to think it not a case of suicide, but "a violent murder committed by wicked spirits." In the morning he found to his astonishment that by Philip's orders the body had been secretly buried in the night. "They had very hastily buried him," says Fountainhall, "pretending that they would not have his body to be gazed upon and viewed by all comers."

Meanwhile "the fame of the country did run" that Sir James had been strangled by his son or servants, and Umphray Spurway, suspecting that all was not right, had, through a friend in Edinburgh, communicated with the Lord Advocate, Sir John Dalrymple (afterwards the first Earl of Stair). His lordship replied by letter, recommending that the body be viewed by Spurway, "along with two or three discreet persons," and if they saw no reason to suppose Sir James had met with foul play, that it should then be buried "privately and with as little noise as could be." When the messenger returned on the Sunday night, however, he was intercepted by Philip, who suppressed the letter.

At three o'clock on the Monday morning Umphray Spurway was awakened, and looking out from his own house at the mills saw horses and "great lights" about Sir James's gate. He arose, and going down to ascertain the cause met one of his men, who told him that Philip, "having received orders from my Lord Advocate for that purpose," was taking the body for interment to Morham churchyard. Umphray did not offer to join the funeral convoy to the lonely burial-place on the Lammermuirs some three miles off, where, in the black winter night, lit only by the torches of the murderer and his satellites, a grave was hastily dug in the frost-bound earth. He prudently went back to bed; but next day "the Englishmen in the manufactory, who were acquainted with the Crowner Laws, made a mutiny anent the burial."

On the following night Spurway was again aroused from sleep, and found at his door two Edinburgh surgeons, named Crawford and Muirhead, and three other gentlemen from the city (one being Mr. James Row, a relative of the deceased), who exhibited an order from the Lord Advocate for the exhumation of Sir James Stanfield's corpse. He accompanied them to the churchyard forthwith. Mr. Andrew Melvil, minister of the parish, with whose services Philip on the former occasion had dispensed, attended in his official capacity. Sir

James's brief rest was broken, and the body was carried into the church, where the surgeons conducted their examination by torchlight. Philip himself was present, how unwillingly and with what feelings may be imagined.

The autopsy concluded, the surgeons requested the relatives to assist in replacing the body in the coffin. It afterwards appeared from Sir George Mackenzie's address to the jury that this was done deliberately, with a view of subjecting Philip to the ordeal by touch. In accordance with the Scots custom the son lifted his father's head, but no sooner had he done so than the horrified onlookers "did see it darting out blood through the linen from the left side of the neck which the pannel [prisoner] touched." Philip, astounded, let the head fall with a loud crash upon the "furm" [bench], staggered back, wiping his bloody hands upon his clothes, and crying lamentably upon his Maker for mercy, fell fainting across a seat. The watchers, "amazed at the sight," looked at one another in awe. They had witnessed the immediate interference of the Deity—"God's revenge against murder."

In due course Philip Stanfield was arrested and brought to justice. His trial took place before the High Court of Justiciary at Edinburgh upon 6th, 7th, and 8th February, 1688. George, Earl of Linlithgow, Lord Justice-General, presided, the

other judges being Sir John Lockhart, Lord Castlehill; Sir David Balfour, Lord Forret; Sir Roger Hogg, Lord Harcarse; and John Murray, Lord Drumcairne. The prosecution was conducted by Lord Advocate Dalrymple and Sir George Mackenzie, the "Bloody Mackenzie" of Presbyterian tradition. Dalrymple had succeeded Mackenzie in the office of Lord Advocate a year before; within a month the political whirligig was again to bring about a similar exchange of parts. Sir David Thoirs, Sir Patrick Hume, William Moniepenny, and William Dundos appeared for the defence. The usual debate upon the relevancy of the libel, the formidable and unwieldy indictment of former times, setting forth at portentous length all (and sometimes more than) the Crown expected to prove, occupied the first day. Stripped of the cumbrous verbiage of their "qualifications," the crimes charged were three in number—(1) high treason, as having drunk confusion to the King; (2) cursing of parents; and (3) murder under trust, each of which was at that date equally punishable by death. The copious arguments of counsel were, according to the old practice, reduced to writing and are printed in the trial. We cannot here enter these learned labyrinths, abounding in quaint subtleties and citations from Carpzovius, Mattheus, and other ancient jurists. Fountainhall, who

gives a curious abridgment of the pleadings, observes, "It was alleged, against the parricide, that the presumptions libelled where not relevant, such as his [Philip's] preceding threats, his hasty burying of him, the corps bleeding when he touched them, . . . and that his [Sir James's] murder might be ascribed to other causes, seeing it is notour [publicly known] that he was once mad, and that it can be proven that he was once melancholy and hypochondriac thereafter, and that he used to tell himself that in one of these fits he rode towards England with a design never to have returned, but his horse stopped and would not go forward, which he looked upon as the finger of God, and returned home again; that once he was throwing himself out at a window at the Nether Bow if Thomas Lendall had not pulled him in by the feet; and that the very week before his death he desired George Stirling to let blood of him because his head was light." The Lords, however, found the libel relevant, and repelled all the defences.

Next day a jury was empanelled, and the prosecutor adduced his proof. The charge of treason need not detain us. It was proved that Philip, in the kitchen of New Mills, had proposed to five persons the comprehensive toast of confusion to the Pope, Antichrist, the Devil, and the King, "and did menace the witnesses with a great Kane that

he would beat and brain them if they told it." The cursing of his father upon many occasions was fully established. For instance, Sir James's own servant deponed that, when asked to come to dinner with his father, Philip's ordinary answer was, "The Devil damn him and you both, and the Devil rive him, for I will not go to him, and if he [Philip] had a sixpence a day he would not go near him, for his father girned upon him like a sheep's head in a tongs." On another occasion, Philip having obtained some tobacco from a shop in the village without paying for it, the vendor hinted that Sir James might do so; whereupon Philip rudely retorted, "The Devil take him and his father both, for there never came an honest man out of Yorkshire"—a graceful allusion to his parent's original domicile.

With regard to the cause of Sir James's death Mr. James Muirhead, one of the surgeons who made the post-mortem, was examined, but, curiously enough, only as to the miraculous bleeding of the corpse. The joint medical report stated that there was upon the neck "a large and conspicuous swelling, about three inches broad, of a dark red or blae colour, from one side of the larynx round backwards to the other side thereof," which, on incision, was found to be full of bruised blood. The neck was dislocated. Otherwise the body presented a healthy

appearance, and was entirely free from water. Mr. Muirhead deponed that when he and the other surgeon were "putting on the clean linens and stirring and moving the head and craig [neck], he saw no blood at all." There were also produced for the Crown separate reports of the Chirurgeons of Edinburgh and the College of Physicians, based on the post-mortem appearances as reported, to the effect that strangulation, not drowning, was the cause of death.

It was proved that father and son were upon the worst of terms; that Philip had repeatedly threatened to take his father's life if he was disinherited in favour of his brother, "though he should die in the Grass Mercat for it," *i.e.*, on the gallows; and that Sir James went in great fear of him, having twice narrowly escaped assassination at his hands. Mr. Roderick Mackenzie, an Edinburgh advocate and the old gentleman's friend, deponed that he met him in the Parliament Close eight days before his death, when "the defunct invited him to take his morning draught." While enjoying their "meridian" in an adjacent tavern, they discussed the unhappy situation of Sir James's domestic affairs. Mr. Mackenzie hinted that he had heard this was partly due to the disinheriting of the heir. "The defunct answered, 'Ye do not know my son, for he is the greatest debauch in the earth; and that which

troubles me most is that he twice attempted my own person.'"

It further appeared that within a month of his father's death Philip had several t mes boasted that he would be "laird of all before Christmas," and would then "ride in their skirts that had been ill to him"; also that during this same period Lady Stanfield, being sick, said to him: "You will shortly want your mother, which will be a gentle visitation to Sir James," when Philip rejoined, "By my soul, mother, my father shall be dead before you!"

Lady Stanfield herself was not free from the dreadful suspicion of having been accessory to her husband's murder. That the relations between husband and wife were most unhappy, and that in the family quarrels she espoused the cause of her prodigal son, was clearly proved. Fountainhall records that "the mother had the dead-clothes all ready," that is, before the occasion for their use arose. "Some alleged that she was concerned in the murder"; and he adds an even more shocking accusation. In the opinion of Sir Walter Scott some countenance is afforded to these horrible rumours by the evidence given at the trial.

The manner of the murder, according to the prosecution, was in this wise. Philip, though young in years, was "old in—everything else." A married

man, as we have seen, he carried on an intrigue with one "Janet Johnstoun, spouse to John Nicols," who lived in the village of New Mills. With the aid of this woman and of two other profligate companions, George Thomson, significantly named "The Devil's Taylour," and Helen Dickson his wife, Philip was alleged to have compassed his father's death, producing incidentally those manifestations which caused the minister's "affrightment in the night." These three accomplices, we learn from Fountainhall, had been examined before the Privy Council on 8th December, "and tortured with the thumbikins but confessed nothing; which criminal lawyers say does purge and elide, at least debilitates and extenuates, all the former *indicia* and presumptions against themselves, if not those also which militated against others." For this reason they were not produced upon the trial, either in the witness-box or, more suitably, at the bar. The servants at New Mills had also been "questioned" regarding their knowledge of the facts in the practical manner of the Crown authorities of that day, for we find that on 13th December "Sir James Stanfield's servants are tortured," apparently with negative results, so far at least as their testimony was concerned.

It appeared from the proof that Janet Johnstoun and the Thomsons had been closeted with Philip

in his chamber the night before the murder; that Janet, though a woman of infamous repute, "who was his own concubine and his father's known enemy," was alone entrusted by him with the duty of "woonding" (laying out) the old man's corpse; that she and Lady Stanfield quarrelled next day "about some remains of the holland of the woonding-sheet" (winding-sheet), when Philip bade his mistress hold her peace, "for he would reward her well for the kindness she had done to him at that time"; and that Thomson the tailor, bringing "the mournings" to the great house and learning that the body was to be raised, said it was the blackest news that ever he heard in his life, and "he would sew no more in the house of New Mylns for the world."

As these adminicles of evidence hardly went the length of sustaining a charge of murder, the Lord Advocate proposed to examine two children, James Thomson, son of "The Devil's Taylour," and Anna Mark, daughter of Janet Johnstoun, aged respectively thirteen and ten. In view of their tender years the Court refused to receive them as witnesses, but allowed their declarations to be taken "for clearing of the assize," which came to much the same thing. Their depositions are very interesting and full of curiously vivid touches, which a brief summary necessarily pretermits.

The boy Thomson deponed to the following effect: Philip and Janet came to his parents' house on the night of the murder between nine and ten. Drink was sent for, but as Philip had no small change "the ale was taken on upon trust." The boy, who had been beaten and sent to bed, heard Janet's daughter Anna call with a request for her mother to go home to nurse her child. He heard Philip say, "God damn his own soul if he should not make an end of his father, and then all would be his, and he would be kind to them." Philip and Janet went out about eleven, and shortly afterwards the boy's father and mother followed. In about two hours his mother returned alone and "came softly to bed." His father came in some time later, and called to him to know if he were awake, but he feigned to be asleep. The wife asked the husband, "What had stayed him?" and he replied, "That the deed was done; and that Philip Stanfield guarded the chamber door with a drawn sword and a bendet pistol, and that he never thought a man would have died so soon; and that they carried him out towards the waterside and tyed a stone about his neck." After some discussion, however, the murderers had thought it better to throw the body into the river without the stone, to produce the appearance of suicide. The boy added that, when his father received from Philip the coat and waistcoat found

upon the body, his mother "was affrighted, or she thought that some evil spirit was in it"; and from that time she was afraid to be alone after nightfall.

The girl, Anna Mark, deponed that on the night in question Philip was at her mother's house, and sent her to see if Sir James had returned from Edinburgh. On learning that he had done so, Philip and her mother went out about eleven. Her "good-father" sent her to bring her mother back to nurse her child, and she found her with Philip at the Thomsons' house. Her mother, however, did not come home till about two in the morning, when Anna heard her "good-father" say, "—— and ——, where have ye been so long?" Her mother answered, "Wherever I have been, the deed is done!" and after that she heard them speak softly together, "but could not know what they said." Since that night Janet, like Mrs. Thomson, "was feared, and would not bide alone," a peculiarity also exhibited by Philip after his father's death.

The testimony of these two children concluded the evidence for the Crown; but Fountainhall states that the prosecution had certain affidavits from London, not mentioned in the report of the trial, "being the oaths of the keepers of the prisons where Philip, the pannel [prisoner], had lain, who deponed that he often cursed his father for not relieving him and boasted that if he were out he

should dispatch him; and that one Betty Dolbry, being with child to him [Philip], had followed him to Scotland and might possibly be on the plot; but this was not produced to the assize."

No witnesses were adduced for the defence. Indeed, as appears from Sir George Mackenzie's address to the jury, the prisoner's counsel took the unprofessional course of throwing up their brief before half of the evidence for the prosecution had been led. The case for the defence, as disclosed upon the pleadings, was that Sir James had committed suicide "in a frainzie or melancholy fit," to which he was alleged to be subject. But even if he were in fact suffering from depression, it is, as Sir George pointed out, hard to believe that "after he had strangled himself and broke his own neck, he drown'd himself." No proof was offered in support of the allegations of his previous insanity and attempted suicide.

It is very rarely that one finds the addresses of counsel to the jury reported in a Scottish criminal trial even of a hundred years later, but here we have a full and excellent report of Sir George Mackenzie's speech for the Crown, probably a unique example of his forensic oratory, at which we can now only glance. "You will discern," said he, "the finger of God in all the steps of this probation as evidently as Philip's guilt; and this extraordinary

discovery has been made as well to convince this wicked age that the world is governed by Divine Providence, as that he is guilty of this murder." The motive alleged was Philip's desire to prevent delivery of the disposition or conveyance of his property made by Sir James in favour of his younger son, "after which settlement Philip could gain nothing but the gallows by killing his father." Sir George noted in passing the affinity between the two crimes first libelled: "for to pray confusion to the King, who is *pater patriæ*, is a cursing of our great parent"; and, dealing with Philip's former attempts upon his father's life, he described that "innocent and obliging Gentleman" as flying from his unnatural offspring like "a trembling Partridge pursued by a Haulk." The charge of treason was not pressed, but the learned counsel made the most of his trump card, the miraculous bleeding of the body, whereby "the Divine Mejesty, who loves to see just things done in a legal way, furnished a full probation in an extraordinary manner." Therein, said he, "God Almighty himself was pleased to bear a share of the testimonies which we produce: that Divine Power which makes the blood circulate during life, has oftimes in all nations opened a passage to it after death upon such occasions." And this was specially remarkable in the present case, where the incision had been carefully bound up,

and the body "designedly shaken up and down," having been some time buried, "which naturally occasions the blood to congeal"; yet at the murderer's touch the blood "darted and sprung out, to the great astonishment of the chirurgeons themselves, *who were desired to watch the event.*" Then, with regard to the hardly less marvellous discovery "by the mouths of babes and sucklings," Sir George observed, "If you had seen this little boy upon his knees begging his father to confess with so much affection, so much judgment, so much piety, you had needed no other probation." This refers to the confronting of the wicked parents with their accusing children before the Privy Council. The peroration is as follows: "If, then, such amongst you as are Fathers would not wish to be murdered by your own children, or such of you as are Sons would not wish the World to believe that you are weary of your Fathers, you will all concur to find this miscreant guilty of a crime that God has taken so much pains to detect and all mankind has reason to wish to be punished. May the Almighty God, who formed your hearts, convince them; and may this poor Nation c'te you as the remarkable curbers of vice to all succeeding ages."

At the conclusion of Sir George's address, the Lord Advocate, to "mak sicker," protested for "an Assize of Error against the Inquest in case they

should assoilize the Pannel"; which, being interpreted, meant that if the jury so far forgot themselves as to acquit the prisoner they would be fined and imprisoned for the wilful error of absolving him against clear evidence! The jury, however, on 8th February, unanimously returned a verdict of guilty of the first and second, and art and part of the third charges libelled, and the Court pronounced sentence of death in the horrible form applicable to his crimes.

As to the ultimate fate of Janet Johnstoun and of "The Devil's Taylour" and his wicked wife, history is silent; but in Mr. Crockett's robustious pages a brilliant future awaited Janet as the wife of the Spanish governor of the Isle of San Juan de Puerto Rico.

"The 15th being come and the gallows and scaffold ready," says Fountainhall, Philip Stanfield "was reprieved for eight days longer by the Chancellor at the priest's desire. He craved by a bill that those already tortured for his father's murder might be re-examined. This he thought would clear him on their reiterated denial; but the Counsel refused it, lest it should harden him." The Lord Chancellor was James Drummond, Earl of Perth, who had adopted the faith of his sovereign, James the Seventh. Fountainhall adds that Philip "had tampered with the Popish priests and professed

himself to be of their religion, hoping thereby to get his life"; but finding this move unsuccessful, he returned to the Presbyterian fold.

On the 24th the sentence was duly carried out. At the Cross of Edinburgh Philip Stanfield was hanged upon a gibbet. The tongue wherewith he had cursed his "natural and kindly parent" was cut out and burned upon the scaffold; the right hand raised by him against his father's life was cut off and affixed to the East Port of Haddington, "as nearest to the place of the murder"; his dead body was hung in chains at the Gallow Lee, between Edinburgh and Leith; his name, fame, memory, and honours were ordained to be extinct; his arms were riven furth and delete out of the book of arms, and all his goods and gear were forfeited "to our Sovereign Lord, to remain perpetuallie with his Highness in property."

He maintained to the last his complete innocence of the old man's blood, and "imprecated a judgment against himself if he was in the least guilty or in the foreknowledge of his father's death." Two incidents in connection with his execution and the fate of his remains were noted by the superstitious of the day. At his hanging the knot of the rope slipped, "whereby his feet and knees were on the scaffold (this I Robert Mylne, Writer, saw with my own eyes) which necessitate the hangman

to strangle him, bearing therein a near resemblance with his father's death." Application being made to the Privy Council, probably by Lady Stanfield, for permission to bury the body, "Duke Hamilton was for it, but the Chancellor would not consent, because he had mocked his religion." The recently converted Lord Chancellor evidently found Philip's taste in toasts offensive.

The body, as we have seen, was hung up in chains at the Gallow Lee, among those of other malefactors,

"Waving with the weather while their neck will hold."

It was, however, secretly taken down a few days afterwards and thrown into a neighbouring ditch, "among some water, as his father's corpse was." Once more the body was hung up by order of the authorities, but it was again mysteriously removed, "and no more heard thereof."

"This," concludes Fountainhall, whose account we have hitherto followed, "is a dark case of divination to be remitted to the great day, whether he was guilty or innocent. Only it is certain he was a bad youth, and may serve as a beakon to all profligate persons." But without seeking to anticipate that final finding, we may rest assured that Sir James Stanfield died by some hand other than his

own, and that Philip, who clearly was *capable de tout*, was, in Braxfield's classic phrase, "nane the waur o' a hangin'."

The case of Philip Stanfield attracted the notice of Sir Walter Scott, who makes reference to it on several occasions. The earliest of these is in his private note-book, extracts from which are given by Lockhart, where, under date 15th March, 1797, he writes: "Read Stanfield's trial, and the conviction appears very doubtful indeed. Surely no one could seriously believe, in 1688, that the body of the murdered bleeds at the touch of the murderer, and I see little else that directly touches Philip Stanfield. It was believed at the time that Lady Stanfield had a hand in the assassination or was at least privy to her son's plans; but I see nothing inconsistent with the old gentleman's having committed suicide." In later years, when Adolphus, who discovered the identity of the author of *Waverley* from his works, was visiting him at Abbotsford, Scott recommended his guest to read the trial, and lent him his own copy of the original folio for the purpose.

In his notes to "Earl Richard" in the *Minstrelsy*, Scott discusses the superstitious belief in the bleeding of the murdered corpse, and instances Stanfield's case as the last and leading example in Scotland. He also refers to the trial of Muir of Auchindrane,

which took place in 1611, where a conviction was obtained by similar miraculous means, and of which he himself made a ballad, "Auchindrane, or the Ayrshire Tragedy," in 1830.

The last case of the kind in England reported in the State Trials, and one of the most remarkable instances of touching as a test for murder, is that arising out of the death of Joan Norkott in 1628, sixty years before the Stanfield affair. This woman was found dead in her bed with her throat cut, the knife with which the wound had been inflicted sticking in the floor, in a room within that occupied by her husband's mother, sister, and brother-in-law. At the inquest these persons declared that they had slept in the outer room that night, but heard and saw nothing amiss, and that no one could have entered the inner room without their knowledge. The coroner's jury accordingly returned a verdict of *felo de se*. In consequence of certain rumours, however, they afterwards desired that the body should be exhumed, which was done *thirty days after the death*, in presence of a curious crowd, including the three relatives above mentioned and the husband of the deceased, who had been absent on the night in question. All four were required to touch the corpse, "whereupon," in the words of Sergeant Maynard, who reports the case, "the brow of the dead, which before was of a livid and

carrion colour, begun to have a dew or gentle sweat arise on it, which increased by degrees till the sweat ran down in drops on the face. The brow turned to a lively and fresh colour, and the deceased opened one of her eyes and shut it again; and this opening the eye was done three several times. She likewise thrust out the ring or marriage finger three times and pulled it in again, and the finger dropped blood from it on the grass."

These phenomena were attested by the minister of the parish and by his brother, who also was in holy orders. The former had dipped his finger in the supernatural fluid, and swore that it was blood.

The coroner's jury withdrew their former verdict. The four accused were duly tried at Hertford Assizes for the murder, and, against the expressed opinion of Judge Harvey, who tried the case, were acquitted. The miraculous wink was no better than an ordinary nod to so blind a jury. On appeal, the case was re-tried at the Bar of the King's Bench before Sir Nicholas Hyde, the Lord Chief-Justice, when a less sceptical jury found the husband and his mother and sister guilty, but acquitted the brother-in-law. The two former were executed, but made no confession; the sister, owing to her condition, was reprieved.

The fact that the victim's neck was broken, as also was that of Sir James Stanfield, disposed of the

suggestion of suicide; while apart from the bleeding of the corpse, "according to God's usual method of discovering murder," to quote Philip's indictment, the circumstantial evidence, as in his case, pointed plainly to the prisoners' guilt.

Echoes of the Stanfield case reverberated in the Parliament House for some years after the murder. On 22nd December, 1693, the children of one James Scott of Bristo "pursued" Sir James's creditors, who were in possession of his estates, upon an assignation of his share of the cloth manufactory granted to Scott by him on the day of his death. The deed, duly executed, was found lying on the table in Sir James's room, and directed to Scott, who called for it on the following day. Presumably it had escaped Philip's notice. The question being, Was there delivery of the document in a legal sense? the Lords thought this "a too nice and metaphysical tradition," and held that the deed was undelivered.

On 9th November, 1697, Sir James's creditors presented a petition to the Court, stating "that John Stanfield, his son and apparent heir, was *in lecto* dying and had the whole writs of the lands whereof they had raised a summons of sale, and there was hazard of his wife's putting them out of the way." The Lords, "this extraordinary case

requiring haste," ordered the title-deeds to be sealed up in the hands of the clerk of Court.

What became of John we are not told, but from the little we know of his habits it is probable that the illness was his last.

In 1713, on the winding up of the cloth company, its property was offered for public sale in various lots, and the lands of New Mills were purchased by the notorious Colonel Francis Charteris of evil memory, who changed the name to Amisfield, after his family seat in Nithsdale, which they still retain. Through him the estate passed in succession to the present owner, the Earl of Wemyss.

The stately mansion of the wicked Colonel has superseded Sir James Stanfield's old unhappy home, and the "great manufactory stone house, together with the walkmylne and dying house," even the busy village itself, are among the things that have been. Only the river is unchanged, and still the eddies circle in the quiet pool where Philip looked long upon his murdered father, that frosty winter morning two centuries ago.

THE GHOST OF SERGEANT DAVIES

"You must not tell us what the soldier or any other man said, Sir; it's not evidence."

—BARDELL *v.* PICKWICK

FEW JUDICIAL UTTERANCES ARE BETTER known or more widely quoted than this immortal dictum of Mr. Justice Stareleigh. Yet there was precedent against his Lordship's ruling, for in the year 1754 the High Court of Justiciary had admitted as evidence what was said by "the soldier's"

ghost! and so lately as 1831 the testimony of a voice from the other world was accepted in the Assynt murder case by the same tribunal.[1] But English practice was no stricter, and although only two instances of spectral evidence occur in the State Trials, the research of Mr. Andrew Lang has disclosed similar cases. Both of the Scots spirits spoke in Gaelic, which would seem to be an appropriate medium of communication, but for the fact that the soldier, an Englishman, while in the flesh had no knowledge of that tongue.

The case first mentioned arose out of the slaying of Sergeant Davies, and the trial of his murderers was privately printed for the Bannatyne Club at the instance of Sir Walter Scott. The time was some three years after the doleful day of Drummossie, the place a solitary hillside at the head of Glenclunie, in the heart of the Grampians. "A more waste tract of mountain and bog, rocks and ravines, extending from Dubrach to Glenshee, without habitations of any kind until you reach Glenclunie, is scarce to be met with in Scotland," writes Sir Walter; "a more fit locality, therefore, for a deed of murder could hardly be pointed out, nor one which could tend more to agitate superstitious feelings."

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[1]The Assynt case is described in "The Pack of the Travelling Merchant" in this book.—E. P.

The swell following the great gale of the Forty-five had not subsided in the remoter Highlands; and bands of disaffected and broken men still lurked in security among the grim defiles and rugged fastnesses of that formidable land. The disarming of the Highlanders was a farce, as Prestongrange admitted to David Balfour. To stamp out the smouldering embers of the Rising, and to enforce the Disarming Act and that which proscribed the national dress, the Government still maintained garrisons throughout the suspected districts. From these stations small pickets were sent out to occupy various posts, whence they communicated with one another, and constantly patrolled the country.

In the month of September, 1749, Sergeant Arthur Davies, with a party of eight men of the regiment of foot commanded by Lieutenant-General Guise, were quartered at Dubrach, a small upland farm near the clachan of Inverey in Braemar. They had marched thither in the previous June from their headquarters at Aberdeen. Another party of the same regiment, under the command of a corporal, guarded the Spittal of Glenshee, some eight miles off. In the course of patrolling the district, these two parties were wont to meet twice a week at a spot midway between their respective stations. During the three or four months in which Sergeant

Davies had occupied the hostile territory, he seems to have discharged his onerous duties with tact and moderation, and though officially unpopular, had managed to obtain the goodwill of his subject neighbours. The private tastes and character of the man were likeable: he was of a genial disposition, a keen and indefatigable sportsman, fearless, thrifty, and particular in his dress. For one in his position his circumstances were prosperous. He had been married for about a year to the widow of a former comrade, and his wife shared the responsibilities of his post. Beyond Dubrach and farther up Strathdee there was at that time no cultivated land, and it was the sergeant's daily custom, combining business and pleasure, to wander by himself with rod or gun among the hills, glens, and streams of those inhospitable and lonely wilds. Though often warned of the risk to which such habits exposed him at the hands of lawless and desperate men, many of whom were then "in the heather," the sergeant laughed at danger, and continued to "gang his ain gait."

His figure was a notable one in so poor a neighbourhood. His ordinary dress was "a blue surtout coat, with a striped silk vest, teiken breeches, and brown stockings." He carried a green silk purse containing his little capital, fifteen and a half guineas in gold, and a leather purse with silver for

current expenses. The existence of this green silk purse was a matter of common knowledge, for it was his kindly way, when playing with the children of the clachan, "to rattle it for their diversion." He wore two gold rings, one plain, engraved on the inside with the letters D. H. and the motto, "When this you see, Remember me." This "posie" had reference to the late David Holland, sometime paymaster of the regiment, and the sergeant's predecessor in the lawful affections of his spouse. It would appear that he had no sentiment in such matters, for his brogues were enriched with a pair of large silver shoe-buckles formerly the property, and also bearing the initials, of the defunct. The other ring, which plays a part in the story, was of curious design, and had "a little lump of gold" in the form of a heart raised upon the bezel. The sergeant, further, wore silver buckles at his knees, a silver watch and seal at his fob, two dozen silver buttons on his waistcoat, and carried in his pocket a penknife of singular form. His "dark mouse-coloured hair" was tied behind with a black silk ribbon, and his silver-laced hat, with a silver button, had his own initials, misplaced, cut on the outside of the crown. A gun with a peculiar barrel, given to him by a brother officer, completed his usual equipment.

Thus accoutred and adorned Sergeant Davies, very early on the morning of Thursday, 28th Sep-

tember, 1749, bade farewell to his wife at the house of Michael Farquharson, where they lodged, and set forth in advance of his men to meet the patrol from Glenshee. Four of his party followed him soon after. This arrangement was not unusual, and on the return journey he would often "send the men home and follow his sport." An hour after sunrise he was seen and spoken to in Glenclunie by one John Growar, whom he had occasion to reprimand for wearing a coat of tartan, in contravention of the Act. With characteristic good-nature Davies "dismissed him, instead of making him prisoner." The four soldiers from Dubrach duly met the corporal's guard from Glenshee; on their way they had a distant glimpse of the sergeant still pursuing his sport, and heard him fire a shot. They marched home in the afternoon without seeing anything further of him. After the patrols had separated, the Glenshee party encountered the sergeant at the Water of Benow, half a mile from the rendezvous. Davies informed the corporal "that he was going to the hill to get a shot at the deer." The corporal thought it "very unreasonable in him" to venture on the hill alone, as he himself was nervous even when accompanied by his men. To which the sergeant answered "that when he had his arms and amunition about him, he did not fear any body he could meet." Whereupon they

parted company; and from that hour Sergeant Davies vanished from among living men, and his place knew him no more.

Next day the news spread throughout the district that the sergeant had disappeared. The captain of the garrison at Braemar Castle sent a party of men on the Sunday to Dubrach, and on the Monday the whole countryside was raised to search for the missing man. After four days of fruitless labour, the search was finally abandoned; no trace of the sergeant could be found. From the first his wife was certain that he had met with foul play. As she afterwards said, "It was generally known by all the neighbourhood that the sergeant was worth money and carried it about with him." She scouted the rumour that he had deserted, "for that he and she lived together in as great amity and love as any couple could do that ever was married, and that he never was in use to stay away a night from her; and it was not possible he could be under any temptation to desert, as he was much esteemed and beloved by all his officers, and had good reason to believe he would have been promoted to the rank of sergeant-major upon the first vacancy." Her view came to be the accepted one, and the opinion of the country was that the sergeant had been robbed and murdered, and his corpse concealed amid the desolate high places of the hills.

In June, 1750, nine months after the disappearance, Donald Farquharson, the son of Michael, with whom Davies had lodged when on earth, received a message from one Alexander M'Pherson "that he wanted much to speak to him." M'Pherson was then at his master's sheiling (shepherd's hut) in Glenclunie, some two miles distant from Dubrach. A few days afterwards Farquharson went to see him as requested, "when M'Pherson told him that he was greatly troubled with an apparition, the ghost of the deceased Sergeant Davies, who insisted that he should bury his bones; and that he having declined to bury them, the ghost insisted that he should apply to Donald Farquharson, saying that he was sure he would help to bury his bones." The spirit's confidence was misplaced, for Donald at first declined the office, and "could not believe that M'Pherson had seen such an apparition." But on the ghost-seer stating that, guided by his visitant's description, he had actually found the bones in question, and offering to take him to the spot, Donald reluctantly agreed to accompany him; "which," as he naïvely says, "he did the rather that he thought it might possibly be true, and if it was, he did not know but the apparition might trouble himself."

M'Pherson led him to the Hill of Christie, be-

tween Glenchristie and Glenclunie, two or three miles from Dubrach, and about half a mile from the road taken by the patrols between that place and Glenshee. The body, which lay on the surface of the ground in a peat moss, was practically reduced to a skeleton. The bones were separated and "scattered assunder," but the "mouse-coloured" hair of the unhappy sergeant, still tied with the black silk ribbon, was intact. Fragments of blue cloth, some pieces of striped stuff, and a pair of brogues from which the tags for the buckles had been cut, left little doubt as to the identity of the remains.

M'Pherson told his companion that when he first found the bones, eight days before, they lay farther off under a bank, and "he drew them out with his staff." Donald inquired, "If the apparition had given any orders about carrying his bones to a churchyard?" and learning that the spirit had indicated no preference for any specific resting-place, he agreed to bury the bones on the spot. They accordingly dug a hole in the moss with a spade brought by M'Pherson, and buried therein all that they had found.

Now, although M'Pherson does not appear to have told Farquharson at this time, he afterwards swore that the ghost, being pressed by him to dis-

close who had slain the sergeant, did, on the occasion of its second appearance, actually name the murderers. To this we shall return later.

Between the discovery of the bones and the communication to Donald Farquharson, M'Pherson had informed John Growar (the man to whom the sergeant had spoken about the tartan coat) both of his spectral visitor and of what he had found. "John bid him tell nothing of it, otherwise he would complain of him to John Shaw of Daldownie." To anticipate this, M'Pherson himself reported the circumstance to Daldownie, who "desired him to conceal the matter, and go and bury the body privately, as it would not be carried to a kirk unkent [unknown], and that the same might hurt the country, being under the suspicion of being a rebel country." Later, M'Pherson showed Growar where he had found the bones. It was not far from the place at which John had met the sergeant on the day of his death.

Notwithstanding the desire for secrecy expressed by all the parties, someone let out the finding of the body, with the result that local interest was directed to the Hill of Christie. James Growar, a relative of John, presently found there the sergeant's gun, and a girl named Isobel Ego picked up a silver-laced hat with a silver button on it, afterwards identified as his. Isobel, who had been sent

by her master to the hills to look for some horses, remarked on her return, "That she had come home richer than she went out," and produced her find. Her mistress "had no peace of mind, believing it to be Sergeant Davies's hat, and desired it might be put out of her sight"; so the farmer hid the hat under a stone by the burnside, near his house, and knew no more of it. Some time after, however, "the bairns of Inverey," playing about the burnside, lighted upon the hat and took it to the village. It then passed successively through the hands of Donald Downie, the miller of Inverey, and of James Small, factor on the forfeited estate of Storwan, into the custody of John Cook, barrack-master at Braemar Castle, who four years later produced it at the trial. We shall hear of the Strowan factor again.

The barrack-master afterwards said that within ten days of the sergeant's disappearance "it was reported that he had been murdered by two young men about Inverey." By the following summer not only was the story of the ghostly visitant and the resulting discovery of the bones well known throughout the neighbourhood, but "it was clattered" that the spectre had denounced by name as the murderers two persons then living in the district. These were Duncan Terig, *alias* Clerk, and Alexander Bain Macdonald. Both were men of

questionable character and reputed thieves. Clerk lived with his father in Inverey without visible means of livelihood, and Macdonald, who was forester to Lord Braco (the first Earl Fife), resided in Allanquoich. Apart from their supernatural impeachment, many material facts confirmatory of their guilt accumulated against them in the public mind, but four years elapsed before they were brought to trial. It does not appear from the official record how the tardy sword of justice came to be drawn so long after the event, for not until September, 1753, were Clerk and Macdonald apprehended on the charge and committed to the Castle of Braemar. The Lord Advocate stated in Court that the prisoners "were at last accused by the general voice of the country," and that the cause of delay in bringing them to trial was that "at first the proof against them did not appear so pregnant." But certain events after the trial throw some light, as we shall see, on how the charge was made.

On 23rd January, 1754, the prisoners, being judicially examined before Lords Strichen and Drummore, two of the Lords Commissioners of Justiciary, each gave different and contradictory accounts of their movements upon the day of the murder. Clerk declared that he, in company with Macdonald, was upon the Hill of Gleney the day

Sergeant Davies disappeared; that both were armed with guns; that Macdonald fired one shot at some deer; and that at ten o'clock that morning he parted from Macdonald on the hill and returned to his father's house, to which Macdonald came the same evening, and where he stayed all night. Macdonald declared that he spent the night at his own house in Allanquoich, and did not see Clerk after they parted on the hill about nine or ten o'clock. For the rest, his declaration concurred with Clerk's.

The trial began before the High Court of Justiciary at Edinburgh on 10th June, 1754, the judges being Lord Justice-Clerk Alva, who presided, and Lords Strichen, Drummore, Elchies, and Kilkerran. The two last named had assisted Argyll, the Justice-General, at the judicial murder of James of the Glens two years before, as immortalised by Stevenson. The Lord Advocate, William Grant of Prestongrange, so vividly portrayed in *Catriona*,[2] Patrick Haldane and Alexander Home, "His Majesties Solicitors," and Robert Dundas, conducted the prosecution. The prisoners were represented by Alexander Lockhart (who ten years later in that Court heroically defended Katharine Nairn) and Robert M'Intosh, the friend of Scott.

In the debate upon the relevancy, which, as was then usual, occupied the first day of the proceed-

[2]In America, called *David Balfour*.—E. P.

ings, it was argued for the pannels that they were persons of good fame, and had no malice against the sergeant; that they had a true and warrantable cause for being on the hill under arms; and that they did so openly and avowedly. It was further objected that though arrested for the murder as already described, and having almost "run their letters" without being served with an indictment, they were again committed for theft, and the time nearly expiring in that case also, they were detained on a third warrant for wearing the Highland Dress, and last of all, "upon the malicious information of some private informer," were served with this indictment. They offered to prove that after they had left the hill, the sergeant was seen alive with his party, but in support of this allegation no shadow of evidence was afterwards adduced. The Lord Advocate confidently answered that such facts and circumstances would come out upon proof as would satisfy the jury of the pannels' guilt. The delay complained of was owing to no intention of his to oppress the pannels—"he had early information of the murder charged upon and was very willing and desirous it might come to light"—but was due to the difficulty of obtaining conclusive evidence against them, which he hoped he had now done. The Court found the libel relevant, and adjourned till the following day.

At seven o'clock next morning (11th June) the trial was resumed, and a jury, composed of Edinburgh tradesmen, was empanelled. Macdonald was allowed to amend his declaration to the effect that he had spent the night of the murder at the house of Clerk's father in Inverey. The Lord Advocate's first witness was Jean Ghent, the widow of the murdered man, from whose evidence many of the foregoing facts have been related. She described the dress and belongings of her husband on that morning when she last saw him alive, and identified as his the hat and gun found on the hill, as already mentioned. She had seen him cut his initials on the hat, and had remarked to him at the time, "You have made a pretty sort of work of it by having misplaced the letters." The stock of the gun had been altered, but she knew it by "a cross rent" in the middle of the barrel, occasioned, as her husband had told her, by his firing a shot when the gun was over-loaded. While the search party was being organised she had asked the prisoner Clerk, "whom she took to be a particular friend, to try if he could find the body"! The poor woman then little knew how well qualified he was to do so.

Donald Farquharson, whose evidence we have recounted, told how M'Pherson communicated to him the spirit's message, and described the subsequent burial of the remains. He also identified the

gun produced, having been present when Davies fired the charge which cracked the barrel. He had seen gold rings, "one of which had a knob upon it," on the fingers of Elizabeth Downie, a girl whom Clerk had married since the murder. It struck him as being like the sergeant's ring, and he questioned her about it, but she said it had belonged to her mother. Macdonald, as Lord Braco's forester, was the only man who had a warrant "for carrying guns for killing of deer," and Clerk was usually associated with him in his expeditions. Clerk was reputed a sheep-stealer. The witness knew nothing against Macdonald "but that he once broke the chest of one Corbie, and took some money out of it." He considered M'Pherson, the ghost-seer, "an honest lad," but it was the general opinion "that all is not to be believed that he says."

Alexander M'Pherson was then called. In the earlier part of his examination he made no reference to the ghost, but merely stated that in the summer of 1750 he found, lying in a moss bank in the Hill of Christie, the bones of a human body, which at the time he believed to be that of Sergeant Davies. His description of the appearance of the remains agreed with that given by Farquharson. When first discovered, the body was partially concealed, and "by the help of his staff he brought it out and

laid it upon the plain ground, in doing whereof some of the bones were separated one from another." He narrated his conversations on the subject with Growar, Daldownie, and Farquharson, described the burial of the bones, and gave the following account of his parleyings with the disembodied sergeant: One night in June, 1750, being then abed in his master's sheiling at Glenclunie, "a vision appeared to him as of a man clad in blue," which he at first took to be "a real living man," namely a brother of Donald Farquharson. The spirit, presumably unwilling to disturb the other sleepers, withdrew to the door of the hut, and M'Pherson arose and followed it outside, when it made the startling announcement, "I am Sergeant Davies!" It added that, in the days of its flesh, it had been murdered on the Hill of Christie nearly a year before, minutely described the place where the body was hidden, and requested M'Pherson to arrange with Donald Farquharson for its interment. Notwithstanding the singular character of the interview, M'Pherson retained sufficient wit to inquire who had done the deed. The spectre made answer that if M'Pherson had not asked, it might have told him, but as he had, it could not. Perhaps to do so was contrary to ghostly etiquette. Thereupon the apparition vanished "in the twinkling of an eye." So exactwere its directions as to the

position of the body, that M'Pherson "went within a yard of the place where it lay upon his first going out." Although this should have been an absolute guarantee of the ghost's good faith, M'Pherson did nothing further in the matter. A week later, at the same time and place, "the vision again appeared, naked, and minded him to bury the body." M'Pherson repeated his inquiry as to the identity of the murderer, and the spectre, having apparently laid aside its reticence with its raiment, at once replied, "Duncan Clerk and Alexander Macdonald," and vanished as before. Both conversations were held in Gaelic, with which language the sergeant, when in life, was unfamiliar. Excepting Growar, Daldownie, and Farquharson, M'Pherson had told no one about the vision, nor did he tell the other folks in the sheiling at that time.

Some whisper of the spirit's purpose must have reached the ear of Duncan Clerk, for that autumn he repeatedly invited M'Pherson to enter his service. Clerk's circumstances had unaccountably improved of late. He had taken upon lease the farms of Craggan and Gleney, and was married to Elizabeth Downie, the damsel with the remarkable ring. At Martinmas, 1750, M'Pherson, yielding to his solicitations, became a member of his household. He noticed that his new master carried a long green silk purse, while his mistress wore a gold

ring, "with a plate on the outside of it in the form of a seal," both of which, he heard it reported, had belonged to the murdered man. One day when they were together on the hill, Duncan, "spying a young cow," desired M'Pherson to shoot it. The latter refused to do so, and administered the moral reproof, "that it was such thoughts as these were in his heart when he murdered Sergeant Davies!" Duncan at first used "angry expressions," but M'Pherson sticking to his point, he "fell calm," desired him to keep the secret and he would be a brother to him, offered to help him to stock a farm when he took one, and gave him a promissory note for twenty pounds Scots "to hold his tongue of what he knew of Sergeant Davies." M'Pherson afterwards asked Duncan for payment of the note and failing to obtain it, left his service. That M'Pherson did tackle his master about the murder, is corroborated by John Growar, who reports a conversation between them on the subject, when Duncan, to deprecate exposure, pathetically remarked, "What can you say of an unfortunate man?" After Clerk's arrest, his brother Donald "solicited" M'Pherson to leave the country, "that he might not give evidence," and offered him "half of every penny Donald was worth" if he would bear false witness at the trial.

Whatever may be thought of M'Pherson's ghost

story, it is supported by the testimony of Isobel M'Hardie, in whose sheiling the vision appeared. This lady, who missed the spirit on its first call, deponed that on the night in question she, along with her servants, was sleeping in the hut, when she awoke and "saw something naked come in at the door in a bowing posture." From motives either of modesty or fear, "she drew the clothes over her head," and unfortunately saw nothing further. Next morning she mentioned the matter to M'Pherson, who, having decided to comply with the ghost's request, assured her "she might be easy, for that it would not trouble them any more."

James Macdonald, Allanquoich, stated that, having heard the rumour of the pannels' guilt, he applied to Clerk's father-in-law, Alexander Downie, to know if it were true. Downie admitted that it was so, adding, "What could his son-in-law do, since it was in his own defence?" Macdonald had seen upon Elizabeth Downie's finger after her marriage a gold ring, "having a little knap upon it like unto a seal," which he suspected had belonged to Davies. Peter M'Nab, a neighbour, also saw the gold ring, "pretty massy, having a lump upon it pretty large," and asked Elizabeth how she came by it, to which she answered "that she had bought it from one James Lauder, a merchant." Elspeth Macara, Clerk's servant, had often seen

her mistress wearing a gold ring "with a knob upon it of the same metal."

Lauchlan M'Intosh, who had been a servant of the sergeant's landlord, deponed that some two years after the disappearance he saw in the hand of the prisoner Macdonald a penknife resembling one Davies used to carry, which had certain peculiarities known to the witness. He remarked at the time that it was "very like Sergeant Davies's penknife," but Macdonald merely observed "that there were many siclikes."

John Grant, Altalaat, deponed that the pannels lodged in his house on the night of 27th September, 1749, that preceding the murder. Next morning, "after the sun-rising," they went out, each with a gun, saying "that they intended to go a deer-hunting." As he left home that morning to attend a fair at Kirkmichael, and did not return for four days, Grant knew no more of their doings. He was corroborated by his son, who saw the pannels start on their shooting expedition, going up the water to the Hill of Gleney, a mile and a half from the Hill of Christie. Clerk was wearing a grey plaid. Jean Davidson, Inverey, stated that "about sun-setting" on the day Sergeant Davies disappeared she saw Clerk, "having a plaid upon him with a good deal of red in it," return from the hill to his father's house in the clachan.

John Brown, ground-officer, Inverey, said that when, by order of the chamberlain, he called out the inhabitants to search for the missing sergeant, Clerk "challenged him for troubling the country people with such an errand, and upon this the witness and the said Duncan had some scolding words."

Such was the circumstantial evidence adduced in support of the charge; but the Crown was in a position to prove by the direct testimony of an eye-witness that Davies undoubtedly met his death at the prisoners' hands. Angus Cameron, a Rannoch man, swore that upon the day of the murder he and a companion named Duncan Cameron, who had since died, were hiding, for political reasons, in the heather. They had spent the previous night on Glenbruar Braes, and were then lying concealed in a little hollow upon the side of the Hill of Galcharn on the lookout for one Donald Cameron, "who was afterwards hanged," and some other friends from Lochaber, with whom they expected to foregather that day. They had lain there since "two hours after sun-rising." The time hung heavily enough upon their hands, and they would welcome any passing incident as a relief to the tedium of their vigil. About mid-day they observed Duncan Clerk, whom Angus knew by sight, and another man "of a lower stature," unknown to

him, both with guns, pass the hollow where they lay. Clerk had on a grey plaid "with some red in it." An hour or so before sunset Angus saw a man in a blue coat with a gun in his hand, whose hat was edged with white or silver lace, about a gun-shot off upon a hill opposite to the place where he lay. Coming up the hill towards the stranger were the two men he had seen in the morning. The three met upon the top of the hill, and after standing some time together Clerk struck the man in blue upon the breast, whereupon the man cried out, clapped his hand to his breast, "turned about, and went off." The other two "stood still for a little," and then each of them raised his gun and fired at him practically at the same moment, though Angus could distinguish the separate reports. "Immediately upon them, the man in blue fell." The murderers then approached their victim, and the watcher saw them stoop down "and handle his body." While they were so employed Angus and his companion deemed it prudent to beat a retreat, which they did unobserved, and, without waiting for their companions, left the district.

Not till the following summer did Angus chance to hear of the vanishing of Sergeant Davies, and realise that he had been present at his slaying. Hitherto he had told no one of what he had seen, but he now consulted two Cameron friends as to

how, in the circumstances, he ought to act. They advised him to do nothing in the matter, "as it might get ill-will to himself and bring trouble on the country." The two Camerons above mentioned corroborated. When informed by Angus that he had seen Clerk and another shoot a man dressed "like a gentleman or an officer" upon a hill in Braemar, one prudently said he did not want to hear any more on that subject, and the other that it would never do to have such a report raised of the country, and advised Angus "to keep the thing secret." We have already seen how the fear of possible reprisals had sealed the lips of those who long before could have enabled the authorities to bring the murderers to justice.

This concluded the evidence for the prosecution which we have been thus particular in setting forth in view of the startling verdict thereon arrived at by the jury. The proof in exculpation consisted of the testimony of but three witnesses. Colonel Forbes of New deponed that as justice of the peace he had been instructed to examine Elizabeth Downie (who, being Clerk's wife, was incompetent as a witness upon his trial) touching the nature and extent of her jewellery. She informed him that she was married to Clerk in harvest, 1751; that before her marriage she had a copper ring "with a round knot of the same metal on it," which she gave to a

glen-herd named Reoch; that since her marriage she had only possessed two rings, a small brass one, which she produced, and a gold one, which she got from her mother. It will be remembered that to other witnesses Elizabeth had given different and contradictory accounts of her rings. Two witnesses who had been at the shearing in Gleney on the day of the murder, said they had seen Clerk there alone about noon. Gleney is a mile farther up the water towards the hill than Inverey, and is about the same distance from Glenclunie. Both witnesses were very vague as to the hour, which they fixed with reference to their dinner, admittedly a moveable feast.

Reoch, who doubtless had his own reasons for declining to testify concerning the ring with the knob on it, having failed to obey his citation as a witness, was fined one hundred merks, the Court inflicting a similar penalty upon another absenting witness. The jury were then enclosed, and the Court adjourned at four o'clock in the morning of 12th June, having sat for twenty-one consecutive hours. At six o'clock the same afternoon the jury, "all in one voice," found the pannels not guilty of the crime libelled! The Court then "assoilized" Clerk and Macdonald, and dismissed them from the bar.

This amazing conclusion was, one would think,

more likely to offend the sergeant's "perturbèd spirit" than the disrespect previously shown to his bones; but whether or not he resented the verdict and troubled in consequence the peace of the jury, we have now no means of knowing. It is highly probable that he had already, by his well-meant intervention, done much to frustrate the ends of justice and bring about his murderers' acquittal; for the supernatural element thus introduced was seized upon by the defence to cast ridicule on the Crown case, and so obscure the very material evidence of the pannels' guilt. Robert M'Intosh, one of their counsel, told Scott that M'Pherson, in cross-examination, swore the phantom spoke "as good Gaelic as ever he heard in Lochaber." "Pretty well," said M'Intosh, "for the ghost of an English sergeant!" But this fact was surely less marvellous than the appearance of the spectre at all; in such matters *c'est le premier pas qui coûte*. It was Sir Walter's opinion that M'Pherson arrived at his knowledge of the murder "by ordinary means," and invented the machinery of the vision to obviate the odium attaching to informers. Such also was the view of Hill Burton, who thought Farquharson a party to the fraud. But this theory ignores the testimony of Isobel M'Hardie, and, as we shall find from contemporary evidence, neither of these men did in fact give the information upon which

the prisoners were charged. Unless they had themselves seen the deed done or heard Angus Cameron's account of its doing, they knew no more than any of their neighbours, and it does not appear that Angus had then spoken. They certainly displayed little zeal to discover the authors of the crime, for M'Pherson, despite the revelation, took service with the murderer and remained a year in his employment, while Farquharson did nothing whatever in the matter.

The reader will recollect that upon the spirit's first appearance M'Pherson took it for "a real living man, a brother of Donald Farquharson." It would be interesting to learn more of this person; where, for instance, he was that night, what were his relations with the accused, and whether he had not himself discovered the remains. For it is much more likely that someone, either with a knowledge of the facts or from a desire to fix public suspicion upon Clerk and Macdonald, the reputed murderers, assumed the spectral rôle and successfully imposed upon the credulous shepherd lad, than that the latter would, in the circumstances, invent and swear to so ridiculous a tale. Mrs. M'Hardie, on the second visitation, saw a naked figure enter the low door of the hut "in a bowing posture," which is more suggestive of a physical than a psychic intruder. Whatever the Lord Advocate may have

thought of M'Pherson's good faith, it is difficult to see how he could ever have expected the jury to swallow the ghost, but it may be (for the records of these old trials are confusing) that the spirit was judicially evoked by Lockhart in cross-examination. Probably, had M'Pherson and Farquharson confined themselves to the bones and left the murderers to be named by Cameron, who saw and knew them, a conviction would have been secured, for M'Intosh admitted to Scott that both the counsel and agent of the accused were convinced of their guilt.

It has been conjectured, in explanation of the inexplicable verdict, that the jury were Jacobites, and as such would be indisposed to deal very strictly in so trifling a matter as the removal of a superfluous English sergeant, but the fact that they were all Edinburgh tradesmen hardly encourages the supposition. "The whole affair," writes Mr. Lang, "is throughly characteristic of the Highlanders and of Scottish jurisprudence after Culloden, while the verdict of 'Not Guilty' (when 'Not Proven' would have been stretching a point) is evidence to the 'common sense' of the eighteenth century."

A curious incident, unnoticed by Scott and Hill Burton, which arose out of the trial, throws some light on the former proceedings, and is in itself sufficiently quaint to be recorded. On Friday, 14th

June, two days after the accuseds' acquittal, Alexander Lockhart, their counsel, presented in his own behalf to the Lords of Justiciary a petition and complaint against James Small, late ensign of the Earl of Loudon's regiment, and then factor upon the forfeited estate of Strowan, whose name, it will be recalled, had been mentioned during the trial. According to the petition, Small was "the person upon whose instigation" Clerk and Macdonald had been prosecuted. He had been "extremely industrious in searching out witnesses against them," and it was alleged that not only did he examine and take declarations from the witnesses in private, but after they were cited to give evidence in Court he "dealt with" some of them not to appear, and endeavoured to intimidate others who did not say "such strong things" as he expected. These matters, said Lockhart, he had thought it his duty to bring to the notice of the Court and jury at the trial, which he had accordingly done. Small, resenting his observations, had, armed with a sword and attended by two men "of very suspicious appearances," lain in wait for Lockhart in the Parliament Close that Friday morning. Upon the arrival of the advocate at his usual hour for attending court, Small rushed upon him, "made a claught at the petitioner's nose," and raising his stick, "which he shaked over the

petitioner's head," made the somewhat superfluous remark that his action was intended as a public affront, which if Lockhart proposed to resent, "he would be at no loss to find out where the said James Small lived." The petitioner pointed out that no words of his could adequately represent "the atrociousness of the injury" to the dignity of the Senators of the College of Justice and the Faculty of Advocates in general and to himself in particular resulting from such scandalous behaviour, and that in these circumstances he was induced to seek redress by summary complaint to the Court "rather than in the way and manner suggested by James Small." The Court granted warrant for the apprehension of the militant factor, and ordered his committal to the Tolbooth till the next sederunt.

Answers to Lockhart's petition were lodged by Small, who stated that he did not receive any information that Clerk and Macdonald were reputed the murderers until he was instructed to inquire into the case and, if possible, discover the criminals. In December, 1753, he assisted the Sheriff-Substitute in making such an inquiry, when it appeared from the precognitions then taken that the accused were the guilty parties, and they were charged accordingly. Had he been called as a witness upon their trial, the objection might validly

have been made "that he had given partial counsel in the cause," but though his name was included in the Crown list the point did not arise. Mr. Lockhart, however, in his address, had gratuitously attacked him, with a view to "blacken the petitioner in the most public manner and to fix upon him for ever the basest and worst of characters." He (Small) had been actuated throughout solely by his duty as a good subject and his desire to see justice done, and the strictures of Lockhart upon his conduct, which were well and widely known, so "grieved, vexed, and confounded him by turns" that he was provoked to treat his traducer in the manner set forth in the petition. He protested that in so doing he had intended no disrespect either to the Court or to the Faculty, and though his behaviour "had not perhaps been altogether legal," he hoped the Court would consider his "great and just provocation."

Next day Small was brought to the bar of the High Court of Justiciary. The proceedings took place with closed doors, and the parties were heard by their procurators. The Lords found that the prisoner had been guilty "of a high contempt of this Court, and of a high injury to the Faculty of Advocates and to the complainer, Mr. Alexander Lockhart," and approved of the means taken by the complainer to obtain redress. They ordained

Small to be imprisoned in the Tolbooth till Wednesday the 19th, when he must apologise in Court to the injured parties, and find caution to keep the peace for one year, under a penalty of fifty pounds sterling. Lockhart was ordered "not to resent the injury done to him in any other manner."

On 19th June Small again appeared in custody before the Lords, gave in his bond of caution, and having publicly begged the pardon of the Court, of the Dean and Faculty of Advocates, and of Mr. Alexander Lockhart, was thereafter dismissed from the bar.

Thus was vindicated the outraged majesty of the law, which, if it had signally failed to avenge the slaying of the sergeant, despite the co-operation of his unquiet spirit, could at least see justice done to an advocate's nose.

KATHARINE NAIRN

Paolo and Francesca in Angus.

—ANDREW LANG

WHEN DOUCE MR. THOMAS OGILVY brought his young bride home to Glenisla his mother doubtless hailed the event as of happy augury for the house of Eastmiln. Hitherto fortune had frowned upon her family. Her eldest son "grew delirious and hanged himself in '48 in a sheepcot." As the length of the drop was insufficient, "he came

down and delved below his feet to make it proper for him," which showed considerable force of character. His brother William "went on board a man-of-war carpenter, and was crushed to death 'twixt two ships." Her husband, who under his chief, Lord Ogilvy, had been out in the Forty-five as a captain of the Prince's army, after the defeat of Culloden was confined in Edinburgh Castle, and, having lain a prisoner in that fortress until 1751, fractured his skull in attempting to escape over the walls "by a net tied to an iron ring." Thomas, the third son, prudently eschewing politics, became by virtue of these calamities laird of the paternal acres. Of her remaining sons, Patrick, sometime lieutenant of the 89th Regiment of Foot, was but newly invalided home from the East Indies, his career eclipsed, while the youngest, Alexander, then prosecuting at Edinburgh his studies in depravity and physic, had just redeemed a nominal celibacy by marriage with a woman of the lowest rank. When therefore, Thomas, at the responsible age of forty, wooed and won Miss Katharine Nairn[1], a damsel of nineteen,

[1]This extraordinary case, with so many elements of romance, and strange aspects of criminal law, has been included in the Notable British Trials, and the report is edited by Mr. Roughead. He has also, in "Lord Dunsinnan's Spectacles" (in his book, *The Rebel Earl*) written a few vivid pages of fiction, with a lively portrait of the heroine. But for a full-length novel about Katharine Nairn, see *The Laird*, by Winifred Duke. (London. John Long. 1925.)—E. P.

the beautiful daughter of Sir Thomas Nairn of Dunsinnan, old Mrs. Ogilvy (by Scots courtesy Lady Eastmiln) may have believed herself entitled to sing the Song of Simeon. How far she was justified in the event the following tale will show:

The marriage, which took place on 30th January, 1765, would seem to have been on both sides one of affection. The bride, of a family more rich in ancestry than in money, was better born than her husband, who was but a "bonnet laird." Marrying against the wish of her relatives she brought him at least youth and beauty, whereas Eastmiln (so named by Scottish custom) was a man of small means who had, moreover, anticipated the modern malady—too old at forty. His health, as we shall see, was bad; he was somewhat of a valetudinarian. Mr. Spalding of Glenkilry, the husband of Katharine's sister Bethia, at whose house Thomas Ogilvy probably met his future bride, quaintly described him as wearing "a plaiden jacket and a belt round his middle, much broader than ever he saw another wear, with lappets of leather hanging down his haunches, and a striped woollen nightcap upon his breast, the lower end of which reached near his breaches." His change of state must have proved beneficial, for Mr. Spalding adds, "upon his marriage he took off these happings."

At this time the inmates of the house of Eastmiln were the dowager, her son and his young wife, Patrick the lieutenant, and three female servants. From the date of the marriage until the first of March ensuing all was apparently well with the family. But on that day—ominously enough a Friday—there arrived upon the scene one who was to prove the evil genius of the house and the harbinger of dishonour and death. This was Anne Clark, "aged thirty and upwards," a cousin of the laird. Her private character and professional pursuits, if known, would necessarily have excluded her from decent society, while as a guest she laboured under the further disadvantage of being "a notorious liar and dissembler, a disturber of the peace of families, and sower of dissension." Her relatives in Angus, however, knew nothing of all this, and she was received by them "without suspicion, and treated as an equal and a gentlewoman." Miss Clark came ostensibly upon a visit of reconciliation from Edinburgh, where she had been associated with her cousin, Alexander Ogilvy, in the sowing of his wild oats. Jealousy was not among her numerous failings, for after his marriage she had lived with his wife's father. By his alliance with "the daughter of a common porter" Alexander had given great offence to his family, and Katharine in particular had not concealed her

opinion of his conduct. Hence the appearance of Anne in her maiden rôle of peacemaker. But it was later alleged that she was actuated by a motive less lovely. Both Eastmiln and Patrick, his heir-presumptive, were in ill health; on their death, should the marriage of the elder prove childless, Alexander the needy would reign in their stead. The first step towards the attainment of this end was to effect an estrangement between the newly married pair. If such was indeed her scheme Anne had no time to lose. Her mission, genuine or not, had failed. Alexander's entry in the family black books was indelible.

Miss Clark must have had a winning way with her, inviting to confidence. She and young Mrs. Ogilvy had never met before, yet within a fortnight of her coming Katharine told her she disliked her husband, "and said if she had a dose she would give it him." Nor was this a mere isolated indiscretion, for Miss Clark states that thereafter "Mrs. Ogilvy did frequently signify she was resolved to poison her husband." She even consulted Anne as to the best means of procuring the requisite drug—whether "from Mr. Robertson, a merchant in Perth, or Mrs. Eagle, who keeps a seed shop in Edinburgh, upon pretence of poisoning rats." Anne considered this classic formula open to objection, as being apt to bring the purchaser "to an untimely

end," but she generously offered to go herself to Edinburgh "and get her brother, who lived there, to buy the poison." Although a woman with many pasts, Anne, as the cousin of the proposed victim, seems at first sight an unsuitable confidant, but such is her own version of the facts. There for the time the matter rested.

Anne Clark had not been long established beneath that hospitable roof when an ugly rumour concerning Mrs. Ogilvy and her young brother-in-law began to trouble the house of Eastmiln. Anne charitably warned her hostess "to be upon her guard as to her conduct and to abstain from the lieutenant's company." Her well-meant hint, however, proved ineffectual, for on Sunday, 19th May, according to her own account, she obtained indisputable proof of a liaison between them. Katharine, although at once apprised of the discovery by her considerate kinswoman, continued in her evil course with cynical, nay lunatic, effrontery. Anne would fain have supported her story by the testimony of her aunt, but old Lady Eastmiln, who enjoyed the same facilities for seeing and hearing what Anne alleged to have occurred, noticed nothing, despite the fact that her attention was specially called to the matter by her niece at the time. She consented, however, to communicate Anne's "suspicions" to Eastmiln.

It happened that at this time a dispute arose between the brothers "about the balance of a bond of provision resting owing to Patrick Ogilvy," as to which the latter considered himself aggrieved. On Thursday, 23rd May, in the course of a discussion of this vexed question, the laird lost his temper, referred to Anne's allegations, and ordered his brother out of the house. Patrick, indignantly denying the charge, left that afternoon and went to stay with a friend at Little Forter, about three miles distant. That Katharine, whether innocent or guilty, was in the circumstances considerably upset is not surprising. Eastmiln warned his wife that she would injure her reputation "by intermeddling in the differences betwixt him and his brother," which hardly looks as if he took the matter seriously; but the servants swore that they overheard him tell her "that she was too great with Lieutenant Ogilvy, and that they were as frequent together as the bell was to ring on Sunday." Anne says that the laird proposed to leave his own house so as to give the young people a clear field, and that she urged Mrs. Ogilvy to agree, "as she saw little prospect of harmony between them," which, so long as she remained their guest, was no doubt likely enough. Be that as it may, Katharine, with singular imprudence, wrote to the lieutenant begging him to return, which he wisely declined to do.

According to Anne's story, Mrs. Ogilvy, who had become impatient at her delay in procuring the poison from Edinburgh as promised, told her, after the lieutenant's departure, that "with much difficulty" she had prevailed upon him to furnish it. That same day Anne had an unexplained conversation with a surgeon of Kirriemuir as to the properties and effects of laudanum and the amount of a fatal dose. Whether she shared Rosa Dartle's passion for information or made the inquiry on behalf of Katharine does not appear.

It is admitted that by the following day husband and wife were so far reconciled that Eastmiln himself wrote to his brother asking him to come back. He sent the letter by a neighbour, to whom he first read it, telling him of Anne Clark's reports, "but that for his [Eastmiln's] part he did not believe them." Patrick, however, still refused to return. He visited various friends in the neighbourhood, and while at Glenkilry, the house of Mr. Spalding, Katharine's brother-in-law, he received from her another letter, the contents of which we do not know, unless it be the one produced later at the trial.

On Friday, 31st May, Patrick entertained his brother officer, Lieutenant Campbell, and a friend, Dr. Carnegie, to dinner at an inn in Brechin. He afterwards stated that before he left Eastmiln,

Katharine asked him to send her for her own use some salts and laudanum, of which he told her he had a quantity in his sea chest, then at Dundee. Unfortunately for him, Dr. Carnegie proved that at this dinner he delivered to Patrick at his request "a small phial glass of laudanum and betwixt half an ounce and an ounce of arsenic," which latter "he wrapt up in the form of a pennyworth of snuff under three covers." Patrick's reason for wanting the arsenic was, he said, "in order to destroy some dogs that spoiled the game"—which was open to the objection previously taken by Anne to Katharine's hypothetical rats. After paying Dr. Carnegie a shilling for these commodities, Patrick accompanied Lieutenant Campbell to Finhaven as his guest for the week-end.

On Monday, 3rd June, Patrick rode to Alyth to visit his kinsman, Andrew Stewart, who had recently married his sister, Martha Ogilvy. Mr. Stewart had brought the lieutenant's sea chest from Dundee to his own house, and on this occasion he saw Patrick "working among some salts" in the chest. Next day Elizabeth Sturrock, one of the servants at Eastmiln, came to Alyth upon some household matter, and delivered to Patrick a letter from Katharine, to which he returned an answer by her. Mr. Stewart having announced his intention of visiting Eastmiln the following day,

Patrick gave him "a small phial glass, containing something liquid which he said was laudanum, and also a small paper packet, which he said contained salts," together with a letter for Mrs. Oglivy all of which he requested his brother-in-law to put into her own hands.

Meanwhile, Miss Clark states that Katharine told her she had heard from Patrick, who "had got the poison the length of Alyth," and would send it by Andrew Stewart next day. Anne, ever zealous for the family honour, very properly exhorted her to abandon her nefarious purpose, dwelt upon the consequences likely to ensue "both in this world and the next," and asked her reasons for "this strange resolution." These were that Mrs. Ogilvy did not love her husband, and that he had used the lieutenant ill upon her account. "How happy," said she, "could they live at Eastmiln, if there were none there but the lieutenant, she, and the deponent [Anne]!" That experienced spinster at once pointed out that in no circumstances could Katharine marry her brother-in-law, but was met by the suggestion that they might live abroad. Still, Anne thought it "a dreadful thing to crown all with murder." Mrs. Ogilvy desired "to be let alone, for the conversation was disagreeable to her." Now all this could have been no news to Anne Clark in June, for on her own showing she had known since the

middle of March both the nature of Katharine's feelings towards her husband, and her fell design.

In the forenoon of Wednesday, 5th June, a chapman (hawker) called and demanded from Eastmiln the price of some cambric, of which Anne was then making ruffles for the lieutenant. As he had been told that Patrick himself supplied the material, the laird was justifiably annoyed, and repudiated liability for the account. Later in the day Andrew Stewart arrived at the house of Eastmiln and privately handed to Katharine the lieutenant's parcel, which she placed unopened in a drawer in the spare bedroom. But Anne was on the alert, and waylaying him, asked if he had brought anything from Patrick. Mr. Stewart, "because he considered Miss Clark as a person given to raise dissension in families," at first denied that he had done so; but, being persistently pressed by her, he finally admitted the fact. Whereupon Anne said "they were black drugs," and that Mrs. Ogilvy meant to poison her husband. Stewart, shocked at the suggestion, was "very much displeased" with her, the more so that she proposed to her aunt to warn Eastmiln of his danger. But "the old lady said it would be improper," being, as appears, a stickler for etiquette.

That night the four relatives supped together—a strange party—at a public house in the Kirkton of

Glenisla. Eastmiln told his brother-in-law, Andrew Stewart, that he had not been well for some time past, and was thinking of consulting Dr. Ogilvy of Forfar. He further said that he was seized with illness the day before, and "had swarfed [fainted] on the hill," for which reason he could drink no ale. So he called for a dram, "which he took, and thereafter seemed hearty and in good spirits." But Miss Clark's conscience, a tender plant, still troubled her, and she unobtrusively left the board in quest of ghostly aid, or, in her own words, "with a view of being advised by the minister what was fit to be done in such a case." The minister of Glenisla was from home, so she rejoined the supper-party without the benefit of clerical counsel, the nature of which, in a situation so delicate, one would like to have known. On the way home Stewart escorted his sister-in-law, the laird following with Anne, who, availing herself of the opportunity, warned him that his life was threatened by his own wife, and begged him to leave home. Eastmiln said he was then too busy to do so, but promised to take nothing from Katharine's hands. It is probable that he was not much impressed by his cousin's solicitude; that he disliked and distrusted her is certain. Apparently the hour was favourable for confidences; Katharine at the same time was telling her companion that she lived a most unhappy

life with her husband, and "wished him dead, or, if that could not be, she wished herself dead." This statement, chiming as it did with Anne's suspicions, somewhat startled Mr. Stewart. When they reached the house, and after Eastmiln and his wife had gone to bed, he proposed to Anne Clark and the old lady "that they should either take Mrs. Ogilvy's keys out of her pocket or break open her drawers at the back," so as to see what were the actual contents of the packet. To neither of these practical suggestions could Anne by any means be brought to agree, which is the more remarkable in view of the urgent anxiety expressed by her earlier in the evening. But when Lady Eastmiln, who had gone up to listen at the door of the connubial chamber, reported "that there was then more kindness between them than usual," Mr. Stewart was confirmed in his opinion "that there was no foundation for Miss Clark's fears."

Next morning, Thursday, 6th June, breakfast was earlier than common—"betwixt eight and nine"—as Mr. Stewart was returning that day to Alyth. All the members of the family were present except the laird, who, having been unwell in the night, was still in bed. Katharine poured out a bowl of tea from the teapot, put sugar and milk in it, and, telling the old lady and Stewart that she was taking it up to Eastmiln, left the room. While

she was upstairs the party was completed by the appearance of Anne, to whom Katharine, on re-entering the parlour, remarked "that the laird and Elizabeth Sturrock were well off that morning, for they had got the first of the tea." Upon which, Anne says she exclaimed in alarm, "What! has the laird got tea? and on Mrs. Ogilvy answering that he had, the deponent said nothing"—like the parrot in the tale. An hour and a half afterwards, according to Mr. Stewart—Anne says half an hour—Katharine announced that the laird "was taken very ill." Anne ran upstairs to the bedroom, and on returning significantly reported that "Eastmiln had got a bad breakfast." Stewart then went up himself to see what was the matter, and found his brother-in-law suffering from sickness and other distressing symptoms. The laird expressively said that "he was all wrong within." Mr. Stewart proposed to Mrs. Ogilvy to send for Dr. Meik of Alyth, but she would not consent, saying that "he [Eastmiln] would be better; and she would not for any money that a surgeon should be called, as the consequences would be to give her a bad name from what Miss Clark had said of her." Later, Mr. Stewart persuaded her to let him summon Dr. Meik, "a discreet person," and thereafter set out for Alyth.

Katharine's forecast was so far justified that

Eastmiln presently rose "and went first to the stables to see his horses fed, and then to the Shillinghill, where he conversed with some of his tenants." On returning to the house he became violently sick in the kitchen, and had to be helped upstairs to bed. Katharine attended to her husband during the forenoon, but from mid-day until his death Anne Clark was in possession of the sick-room. She states that Mrs. Ogilvy refused to remain there unless she (Anne) was dismissed, to which the laird would not agree. Anne and some of the servants represent that Katharine tried to exclude people from the room, but it is proved that, apart from those in the house, Eastmiln was visited by at least five persons, including his brother-in-law, Mr. Spalding, and the local precentor, who was summoned by Katharine to pray with him. The symptoms exhibited by the dying man were admittedly vomiting, purging, "a burning at his heart," pains in his legs, restlessness, and persistent thirst. Anne gave him repeated draughts of water and of ale, none of which he could retain; but on her trying him with "a glass of wine and a piece of sugar in it," the sickness ceased for about an hour. On cross-examination, she had to admit that she got the wine from Mrs. Ogilvy. That the laird had become convinced that his wife had poisoned him is clear. When Anne Sampson, one of the

maids, brought him a drink of water in the same bowl in which Katharine had given him the tea, he cried out, "Damn that bowl! for I have got my death in it already." He said in the hearing of Elizabeth Sturrock, another servant, "that he was poisoned, and that woman [his wife] had done it." Lady Eastmiln reproved him for saying so, to which he answered "that it was very true, and his death lay at her [Katharine's] door." Anne, on the other hand, says that the old lady blamed him for taking anything from his wife, when he replied, "It is too late now, mother; but she forced it on me." He told Andrew Stewart that "he had what would do his turn"; to his friend and neighbour, Mr. Millam, he remarked, "I am gone, James, with no less than rank poison!" At midnight the unhappy man was dead. It was but four months since his wedding-day.

Dr. Meik arrived from Alyth two hours later; it does not appear when he received the summons. He had an interview with the widow, who was apparently "in great grief and concern." She made the remarkable request "that whatever he might think to be the cause of her husband's death, he would conceal it from the world." Patrick Ogilvy, sent for by Mr. Spalding from Glenkilry, where he had been that gentleman's guest, was then in the house, and conducted the doctor to the death-

chamber. He struck Dr. Meik as being, like Mrs. Ogilvy, "in great grief and concern." After a brief examination the doctor departed, having, as it appears, come to no conclusion regarding the cause of death.

That morning (Friday, 7th June) the servants, probably at the instigation of the thoughtful Anne, applied certain scientific tests to the fatal bowl, in which they said they had noticed "something greasy in the bottom." The results were negative. They filled the bowl with broth, which was given to a dog, "who eat it up, but was nothing the worse of it." Anne Clark recounts a curious conversation had by her with the lieutenant on his coming from Glenkilry. She told him "she knew the whole affair of the poison," whereupon Patrick admitted sending it to Katharine, but said "he did not think she had so barbarous a heart as to give it."

The funeral was fixed to take place on Tuesday, 11th June, the lieutenant, as his brother's heir, remaining at Eastmiln to make the requisite arrangements. Mr. Millam, the late laird's friend, tells us that when "the mournings came home" Miss Clark complained to him "for want of a mourning apron, adding that she would make it as dear to them [Katharine and Patrick] as if it was a gown!" This was short-sighted parsimony indeed;

Anne's silence was worth many aprons' purchase. On Monday, the 10th, Mrs. Ogilvy dismissed her dangerous kinswoman, giving her money in presence of Mr. Millam, both of which facts Anne afterwards denied on oath. Anne further swore that before she left the house she did not communicate to anyone, "by letters or otherways," her belief that Eastmiln had been poisoned. Yet early in the forenoon of Tuesday, the 11th, her old flame Alexander Ogilvy arrived from Edinburgh, and dramatically stopped the burial on the ground that his brother had not died a natural death. The widow resented her brother-in-law's action—reasonably enough in view of her conduct—and "behaved very ill, weeping and crying, and wringing her hands and tearing herself." Mr. Millam, hearing what had happened, strangely advised Patrick "to make his escape, if guilty"; to which the lieutenant replied, "That God and his own conscience knew that he was innocent." Next morning, at the request of Alexander Ogilvy, Dr. Meik of Alyth and Dr. Ramsay of Coupar-Angus arrived to make a post-mortem examination of the corpse, Katharine and Patrick offering no objection. Alexander, however, refused to allow the body to be opened until Dr. Ogilvy of Forfar, who had been desired by the Sheriff to attend, was also present. The two surgeons, therefore, merely inspected the corpse and left, refusing

to wait for Dr. Ogilvy. After they had gone the latter arrived, but declined to open the body in the absence of the other surgeons, on the ground that the autopsy might be attended with personal danger. He, in his turn, made an inspection and departed. We shall see later the result of their several observations.

On Friday, 14th June, Katharine and Patrick were apprehended upon the signed information of Alexander Ogilvy, and, having been examined before Mr. George Campbell, Sheriff-Substitute of the county, were consigned to Forfar gaol. That day Miss Clark returned in triumph to Eastmiln, to assist her old friend Alexander in taking possession. On the 17th, the erstwhile medical student, confident in the assumption of his lairdship, "rouped the stocking upon the farm," *i.e.*, sold by auction the cattle, etc., on the false pretence of an authority from Patrick, and appropriated the proceeds of the sale.

On 21st June the prisoners, having been removed to Edinburgh, were examined there before Mr. Balfour of Pilrig, Sheriff-Substitute of Edinburgh—the kinsman of Stevenson's David Balfour—and were committed to the Tolbooth to await their trial. It is said that when they landed at Leith, Katharine was with difficulty rescued from the fury of the populace, so strong was the feeling

against her by reason of the rumour of her misdeeds.

It may be convenient here briefly to consider the purport of the prisoners' judicial examinations, so far as these relate to the question of the poison. In her first declaration at Forfar Mrs. Ogilvy deponed, "That before Patrick Ogilvy left his brother's house she asked him, any time he was at Alyth, to buy for her and send to Eastmiln two doses of salts and a little laudanum, as she slept very ill. . . . That she took one of the doses of salts on the Friday after her husband's death and the other on the Saturday; and on the Sunday and the Monday nights she took the laudanum each night, and as she did not use the whole laudanum she delivered back the glass and the remainder of laudanum to the said Patrick Ogilvy on his return to Eastmiln after his brother's death"—which, as regards the laudanum, was afterwards proved to be true. She admitted giving her husband the bowl of tea, which "she carried straight from the low room, where they were at breakfast, upstairs to her husband's room." She further declared that Elizabeth Sturrock got the remainder of the bowl of tea, as Eastmiln "did not drink it out." Patrick Ogilvy the same day declared, "That the said laudanum and salts he brought from the East Indies with him, as a remainder of what he used

when his health was bad there and on his passage home. . . . That within these two weeks he was at the town of Brechin, and in company with James Carnegie, surgeon, of that place, *but that he received from him no laudanum or any other medicine whatever.*" He corroborated Katharine's account of her request for the drugs.

While in Forfar gaol, Patrick learned from a friend that Dr. Carnegie had disclosed the purchase of the laudanum and arsenic, "upon which the lieutenant seemed to be under some concern," and expressed a desire to see the Sheriff and amend his declaration upon that point; but this could not be done.

When examined before Sheriff Balfour at Edinburgh upon lengthy interrogatories both prisoners, by advice of their counsel, declined to answer the various leading questions put to them, Katharine refusing even to sign her declaration.

On 1st July, Sheriff Campbell of Forfar proceeded to the house of Eastmiln to search the repositories (which since the laird's death had been locked up by the scrupulous Alexander), and found two letters, obviously written by Katharine to Eastmiln before their marriage, and later so described in the indictment. These were produced at the trial as proof of her handwriting, with reference to an unsigned, unaddressed letter alleged

to have been written by her to Patrick on an unknown date, in the following terms:

DR CAPTIN,—I was sorrie I missed you this day. I sat at the water side a long time this forenoon; I thought you would have comed up here. If you had as much mind of me as I have of you, you would have comed up, tho' you had but stayed outby, as there was no use for that; there is more rooms in the house then one. God knows the heart that I have this day, and instead of being better its worse, and not in my power to help it. You are not minding the thing that I said to you or [before] you went out here, and what I wrote for. Meat I have not tasted since yesterday dinner, nor wont or you come here; tho' I should never eat any, it lyes at your door. Your brother would give anything you would come, for God's sake come.

This letter was not recovered by Sheriff Campbell on his search of the premises, but was sent to him later by Alexander Ogilvy. How it came into that gentleman's doubtful hands does not appear. By a curious oversight, Hill Burton, in his narrative of the case, assumes that all three letters were written by Katharine "to her alleged paramour," and even quotes from the two former as such.

The trial commenced before the High Court of Justiciary at Edinburgh upon the 5th of August,

1765. The judges present were the Lord Justice-Clerk (Sir Gilbert Elliot of Minto), Lords Auchinleck (Alexander Boswell, father of the immortal Bozzy), Alemore (Andrew Pringle), Kames (Henry Home), Pitfour (James Ferguson), and Coalston (George Brown). The Lord Advocate (Thomas Miller of Barskimming, the pawky Sheriff Miller of *Catriona*), the Solicitor-General (James Montgomery), Sir David Dalrymple (the future Lord Hailes), and two juniors conducted the prosecution. Alexander Lockhart (afterwards Lord Covington) and the great Henry Dundas appeared for Mrs. Ogilvy; David Rae (later the eccentric Lord Eskgrove) and Andrew Crosbie (Scott's Counsellor Pleydell) represented Lieutenant Patrick Ogilvy. The first day was occupied in the usual debate upon the relevancy of the indictment, which was duly found relevant to infer the pains of law. On the following day there was presented to the Court a petition in the name of the pannels regarding Anne Clark, then in custody in the Castle. The movements of this exemplary female since we left her reinstated at Eastmiln are uncertain. Although in her private capacity of friend and relative of the prisoners she had told extra-judicially everything she could against them, and made a formal statement before the Sheriff, she is said to have shrunk from the painful necessity of swearing to her story

in the witness-box. She therefore disappeared from the ken of the Lord Advocate until the eve of the trial, when she communicated with his lordship as follows:

Lord Advocate,—Upon my coming to town, I am informed that you have been searching for me. It would never bread in my breest to keept out of the way had it not been for terror of imprisonment; but houping you will be more favourable to me I shall weat upon you tomorrow morning at eight of the clock.

Anne Clark.

Sunday evening, eight of the clock.

Despite her "houp," Miss Clark was lodged in the Castle, along with the three women servants from Eastmiln who were to be witnesses in the case. The petition stated that "as she was in a combination to ruin the pannels and, as far as she could, to deprive them of their lives as well as their reputations," it was obviously unfair to them that she should have an opportunity of tampering with the other witnesses. It was accordingly craved that she should be separated from them. This was granted by the Court; but it afterwards appeared that Anne was only removed for one night, and was then replaced in the same room with them as before, by order of Lord George Beauclerk, Commander-in-

Chief of the forces in Scotland, who considered "that the room in the gunner's house she was by desire put into, was by no means a place to keep a prisoner in safety."

At seven o'clock in the morning of Monday, 12th August, a jury was empanelled, and the examination of witnesses began. It was the practice of those times that after a jury was once charged with a pannel the Court could not be adjourned until the jury was inclosed, *i.e.*, till they withdrew to consider their verdict. The hardships thus entailed upon all concerned where the case was of any length are evident. In the present trial the proceedings up to that stage lasted for forty-three consecutive hours, the jury not being inclosed until two o'clock in the morning of Wednesday, 14th August.

The purport of most of the evidence adduced for the Crown has been given in the foregoing narration, but certain points remain to be considered. With regard to the proof of a criminal intrigue between the pannels, the prosecution relied mainly upon the testimony of Anne Clark—"whose evidence," as Hill Burton well observes, "is always suspicious"—corroborated to some extent by that of the servants, Katharine Campbell, Elizabeth Sturrock, and Anne Sampson. No doubt their memories had been much refreshed by Anne's

reminiscences while in the Castle. To Campbell, the most damaging witness of the three, it was objected that she had been dismissed by her mistress for theft, which she practically admitted, and had sworn revenge. The Court, however, allowed her to be examined. When Anne Clark was called, Dundas, for the defence, strongly objected to her admission on the grounds of her infamous character and lurid past; that, in confederacy with Alexander Ogilvy, she herself had propagated the false reports which led to the pannels' arrest; and that she had expressed deadly malice against them, and threatened to bereave them of their lives. Sir David Dalrymple, in reply, did not attempt to whitewash his fair witness, but contended that general proof of character was incompetent; that the crimes charged were occult crimes, only provable by witnesses who lived in the family, "be their character what it will"; that until the evidence was closed it could not be said whether the reports spread by Miss Clark were false or not; and that the pannels must prove the cause of her alleged ill-will. The Court admitted the witness, reserving the question of malice. Anne Clark's examination occupied eight hours. We cannot here discuss the infragrant details of her evidence, though these present many singular and suggestive features—the case was heard with closed

doors, from which let the gentle reader, like the stranger admonished by Mrs. Sapsea's epitaph, "with a blush retire"; but in reference to the proof upon this part of the case it may be generally remarked that the behaviour of the prisoners, as described by Anne Clark and her attesting nymphs, exhibits a reckless disregard of consequences which well-nigh passes belief, while the corroborative evidence of undue intimacy is to a large extent discounted by what we know of the coarseness of speech and manners pervading Scottish society in those days. The acts of familiarity upon which the prosecutor relied to support Anne's tale were said to have occurred in public and before third parties, some even in presence of the husband himself. The very limited capacity of the house of Eastmiln has also to be borne in mind. It appears from an unpublished sketch plan, prepared for the use of Crown counsel, that the house consisted of two storeys; upon the ground floor there were but two rooms, kitchen and parlour, one on either side of the entrance hall or passage; on the flat above were two bedrooms corresponding to the rooms below with a small closet between them over the lobby. A garret in the roof was used as a store-room. We learn from the evidence that the servants slept in the kitchen, beneath the west bedroom occupied by the laird and his wife; that the east bedroom,

above the parlour, was assigned to the lieutenant; and that Anne Clark and old Lady Eastmiln shared a "box-bed" in the parlour. So homely and primitive were then the habits of the Scots gentry that a family of five persons and three servants were thus "accommodated" in four small rooms. It is also in evidence that the kitchen ceiling was unplastered, and that the conversation of the laird and his wife in their bed in the room above was clearly audible in the kitchen below. The partition walls, too, were of lath and plaster, which enabled Anne Clark to overhear from the staircase all that went on in the lieutenant's room. Verily the house of Eastmiln was ill adapted to purposes of stealthy intrigue. If Anne Clark's astonishing tale be true the guilt of the pannels on this count must be accepted; but one hesitates at which the more to marvel—the baseness of Anne if forsworn, or Katharine's unblushing impudence if guilty.

The proof of the murder is in a different case. The ground of the prosecution was that Eastmiln died of poison. This, strange as it may seem, looking to the subsequent verdict, the medical evidence entirely failed to establish. Dr. Meik, who first saw the body, found "the nails and a part of the breast discoloured and his tongue swelled beyond its natural size and cleaving to the roof of his mouth." He was "unacquainted with the effects of

poison," but having been told by Alexander Ogilvy that poison had been administered in this case, he "conjectured" it to have caused the death. Dr. Ramsay concurred as to the post-mortem appearances, with this addition, that the lips were "more discoloured than by a natural death," and, upon the same information, agreed with Dr. Meik. Both admitted having seen similar symptoms in cases of death from natural causes. Dr. Ogilvy, who had inspected the corpse at the request of the Sheriff, deponed "That the breast was white and the lips pretty much of a natural colour. . . . That the face, the arms, and several other parts of the body were black and livid, and that the nails were remarkably black." Manifestly the condition of the corpse, which when seen by the surgeons had lain unburied for six summer days, was due to putrefaction. This Dr. Ogilvy practically admitted, by stating that "he could draw no conclusion as to the cause of the defunct's death." The only appearance that struck him as peculiar was the condition of the tongue, which was "such as occurs from convulsions or other strong causes."

In view of the negative testimony of these experts as to the cause of death, the evidence regarding Eastmiln's general health becomes important. Anne Clark and the three servants represent him as a strong man, sound and hearty until the last

day of his life. His mother, a valuable witness on this as upon many other points, was called by neither party—which affords matter for reflection. Mr. Spalding, his brother-in-law, swore that for some years past Eastmiln had been in bad health, "complaining often of a heart-cholic or pain in his stomach, attended with a short cough which was not continual but seldom left him." That some years before he had suffered from "an ulcerous fever" (as was otherwise proved to be the fact), and was never the same man again; also that on one occasion, being seized with illness at the house of Glenkilry, Eastmiln "got hot ale and whisky with a scrape of nutmeg in it, and was put to bed without any supper"—a curious remedy for gastric inflammation. Mr. Spalding further stated that in February, the month after the marriage, he wrote to Katharine's mother, Lady Nairn, advising "that infeftment be taken in favour of Mrs. Ogilvy upon her marriage contract," owing to the unsatisfactory state of her husband's health. His brother-in-law, Andrew Stewart, deponed that Eastmiln was "a tender man," whose sister, Martha Ogilvy (Stewart's wife), used to say that he would not be a long liver. He repeated what Eastmiln had told him, as already mentioned, about "swarfing on the hill." James Millam, his friend and neighbour, said that four days before Eastmiln died he complained

to him "of a gravel and a cholic, and that he could not live if he got not the better of it." On the Tuesday before his death he became unwell at the deponent's house. He had a fire lit to warm him, though the night was not cold, and got heated chaff applied to ease his suffering. He remarked to the witness "that he was fading as fast as dew off the grass; that he could not get peaceable possession of his house for Anne Clark; that he wished her away; and he got from the deponent a ten-shilling note for the expense of her journey." But that faithful spinster was not so easily disposed of. Five witnesses from Glenisla proved that the day before his death Eastmiln had been attacked by severe internal pain while visiting his tenants; that he had to lie down upon the ground; that he said he had not been so ill for six years; and that "he behoved to get Dr. Ogilvy to give him something to do him good." It should be remembered that at this time there is no suggestion of his having been poisoned by his wife, who, if she had the will, had not then the means to do so, and it is difficult to reconcile the evidence of these relatives and friends with the laird's rude health, as sworn to by Anne and the accusing maids. To poison a person in such a condition seems, to the lay mind, a superfluity of naughtiness.

What told most heavily against the lieutenant

undoubtedly was his deal in arsenic with Dr. Carnegie at Brechin, of the purchase and disposal of which no satisfactory explanation was offered. But, curiously, it was not even proved that the substance sold was in fact arsenic; all that Dr. Carnegie could say was that he had bought it as such long before, and had "heard from those he sold it to that it had killed rats." So much for scientific testimony in 1765! With regard to Katharine, Anne Sampson, one of the maids, swore that on the morning of the day of Eastmiln's death, having followed her mistress upstairs on some domestic errand, she saw her in a closet adjoining the bedroom, "stirring about the tea with her face to the door," but did not see her put anything in the tea. Mrs Ogilvy made no attempt to conceal what she was doing, and spoke both to the servant and to a lad employed in the house, who was also present at the time. Elizabeth Sturrock deponed that her mistress had tried to induce her to say she (Sturrock) had drunk the remainder of the tea. She admitted that Mrs. Ogilvy brought her tea that morning, when she was ill in bed, but she denied it was what had been left by Eastmiln. That Katharine did take salts—she being then in a delicate state of health—Anne Clark admits, and is corroborated by Elizabeth Sturrock, who says she "got a part of them." The incriminating letter from Katharine to Patrick

produced by Alexander, if genuine, leaves little doubt as to their intimacy. One sentence only can be held to refer to the poison: "You are not minding the thing that I said to you or [before] you went out here, and what I wrote for." This might equally be referable to the salts which she says she had asked him to send her. As already pointed out, this letter was without either date or signature, but the indefatigable Anne, presumably an expert in handwriting, swore that it was written by Mrs. Ogilvy. Yet when shown an undoubted letter of Katharine, addressed to Eastmiln, "she did not know whose handwriting it was."

The case for the prosecution was closed at three o'clock on Tuesday afternoon, and the exculpatory proof and addresses to the jury occupied till two o'clock on Wednesday morning. Of the sixty-four witnesses cited for the Crown twenty-four were examined; a hundred and eight witnesses had been summoned for the defence, but for reasons that will presently appear, only ten of these were called. The contemporary report of the trial unfortunately does not include the speeches of counsel, but we read in the *Scots Magazine* that "the evidence was summed up by the Lord Advocate for the King, by Mr. Rae for Lieutenant Ogilvy, and by Mr. Lockhart for Mrs. Ogilvy." Ramsay of Ochtertyre, who was then at the Scots bar, says of Lockhart's per-

formance on this occasion: "He never failed to shine exceedingly in a very long trial, when defending criminals whose case appeared to be desperate. Mr. Crosbie told me soon after, that in the trial of the Ogilvies, which lasted forty-eight hours, he stood the fatigue better than the youngest of them. He took down every deposition with his own hands, but no short ones, when he went out to take a little air. In answering Lord Advocate Miller, who was perfectly worn out, he displayed such powers of eloquence and ingenuity as astonished everybody. To save the life of his unhappy client he gave up, with great art, her character; but contended there was no legal proof of her guilt, though enough to damn her fame."

At four o'clock on the afternoon of Wednesday, 14th August, the jury, "by a great plurality of voices," found both pannels guilty as libelled. Lockhart at once entered a plea in arrest of judgment in respect of certain irregularities in the proceedings. We cannot here deal fully with this interesting debate, which throws an extraordinary light upon the judicial procedure of the day—how in the course of the trial the jury repeatedly "dispersed into different corners of the house," eating and drinking as they pleased, and talking to the Crown witnesses and the counsel for the prosecution; how between three and five o'clock on the

Tuesday morning only one of the judges remained upon the bench, "the rest retiring and conversing in private with sundry of the jury and others"; how, "when the evidence on the part of the pannels began to be adduced, several of the jury showed a very great impatience and insisted that that evidence which the pannels thought material for them should be cut short, and some of them particularly disputed the relevancy and propriety of the questions put by the counsel for the pannels with great heat, insomuch that some of the judges and other jurymen were obliged to interpose, in order that the exculpatory proof might go on; and the counsel for the pannels were obliged to pass from many witnesses, in order to procure attention from those assizers. Hence, though thirty-three hours were spent in hearing calmly the proof adduced for the prosecutors, yet the proof for the pannels, after being heard by those jurymen with great impatience, was put an end to in about three hours." Finally, how, contrary to an Act of Charles II, whereby the prisoner's advocate was to have the last word, Lord Kames, one of the judges, addressed the jury upon the whole case after counsel had done so for the defence. This is the first recorded instance in Scots criminal practice of the familiar charge to the jury by the presiding judge. The Court, in respect of the "regularity and accuracy" with which

the trial had been conducted, repelled the plea. But Lockhart had still another card to play; he alleged that his client was pregnant, and in her case judgment was superseded until her condition should be reported upon by five professional ladies. Sentence of death was then pronounced against Patrick Ogilvy, to be executed on 25th September, and the Court rose, doubtless with much relief.

Next day the jury of matrons, which included Mrs. Shiells, a local practitioner eminent in her art, of whom we shall hear again, reported that they could give no positive opinion on the subject of the remit. The Court therefore delayed pronouncing sentence against Mrs. Ogilvy till 18th November, to give the five ladies the opportunity of arriving at a definite conclusion.

Meanwhile the friends of the prisoners were not idle in their interests. Application was made to the King in Council for a respite to Patrick Ogilvy, not of favour but of right, until certain points of law should be determined: (1) Whether in a capital case an appeal was competent from the High Court of Justiciary to the House of Lords? (2) Whether the proceedings at the trial were fair and legal according to the law of Scotland? and (3) Whether, if the first point were doubtful, the execution of the convict should be respited till that question was judged by Parliament, which was

not then sitting? Prior to the determination of these questions, which were remitted to the decision of the Attorney-General for England and the Lord Advocate, Patrick received four reprieves—the first three for fourteen days each, the last for seven days only. He is said to have been a great player on the violin, and the interval between his condemnation and execution was, we are told, "exclusively devoted to his performance on that instrument."

While the young lieutenant's fate yet hung in the balance, the judicial dovecot of the Parliament House was fluttered by the publication in certain Edinburgh journals of an "opinion" by an English counsel, one Mr. M'Carty, upon the points at issue. This gentleman, writing from London on 14th September, animadverted upon the conduct of the trial, holding that the prisoners were prejudiced by being tried for two entirely different crimes upon one indictment. He was of opinion that if the crimes charged were considered separately and the evidence produced to support one crime taken singly, without the assistance of the other, no jury in England would have found the prisoners guilty. "The intrigue was supposed to be certain, because the husband was supposed to have been poisoned; and, on the other hand, the man was believed to be poisoned, because there was a supposed proof of

intrigue." After criticising the peculiar features of the evidence with some freedom and to excellent purpose, Mr. M'Carty saw neither law nor reason why the proceedings of the Court of Justiciary might not be subject, as well as those of the Court of Session, to review by the Supreme Court. These views on the subject of criminal appeal gave great offence to the College of Justice. The publication of the opinion was held to be contempt of Court, and, upon the complaint of the Lord Advocate, the publishers of the *Edinburgh Weekly Journal*, where it first appeared, and of the *Courant*, *Caledonian Mercury*, and *Scots Magazine*, in which it was reprinted, were haled before the Court of Justiciary to answer for their offence. They severally expressed sorrow for the wrong they had done, and the Court, while dwelling on the "high indignity" which it had thereby sustained, dismissed them with a rebuke.

The law officers of the Crown having reported in the negative upon the questions submitted to them, Patrick Ogilvy was executed in the Grassmarket on 13th November, pursuant to his sentence. Chambers states, so popular was the lieutenant with his regiment, which was then quartered in the Castle, that it was judged necessary "to shut them up in that fortress till the execution was over, lest they might attempt a rescue." A letter from

his colonel, giving him an excellent character, is printed in the report of the trial. In "An Authentick Copy" of his dying speech, published at the time, we read, "As to the crimes I am accused of, the trial itself will show the propensity of the witnesses, where civility and possibly folly are explained into actual guilt; and of both crimes for which I am now doomed to suffer I declare my innocence, and that no persuasion could ever have made me condescend to them. I freely forgive every person concerned in this melancholy affair, and wherein any of them have been faulty to me I pray God to forgive them." The newspapers of the day record a shocking incident at the execution. After he was "turned over," the noose slipped and he fell to the ground. The wretched man, "making what resistance he could," was again dragged up the ladder by the hangman and others, "who turned him over a second time, and he continued hanging till dead." For assisting the law on this occasion, a member of the Society of Tron-Men (chimney-sweeps) was expelled from that association and banished to Leith for five years—a grievous punishment for an Edinburgh citizen.

On 18th November the professional ladies were at length enabled to report that Mrs. Ogilvy could not in humanity be hanged for several months, and the Court further delayed sentence

until 10th March. Upon 21st November Katharine presented a petition to the Court, praying that a judicial factor should be appointed to administer the estates of the deceased laird in the interests of her unborn child. Alexander Ogilvy, his brother's heir-presumptive, did not meantime oppose the application, but in his answers he indicated that if occasion arose he meant to contest the succession. A factor was duly appointed.

On 27th January, 1766, in the Tolbooth of Edinburgh, Mrs. Ogilvy gave birth to a daughter. When the Court met on 10th March to pronounce sentence of death, a physician and two nurses deponed that she was not yet strong enough to be brought up for judgment. The diet was therefore continued for a week. At seven o'clock on the night of Saturday the 15th, however, the interesting invalid summoned sufficient energy to burst her bonds. Her escape, which is said not to have been discovered till the Sunday afternoon, was, as we shall see, probably collusive. The contemporary accounts are suspicious. It is said that, being indulged with "the quiet and privacy which the nature of her illness required," she dressed herself in man's clothes, and, the door of her room having been at her request "left open for the benefit of the air," she naturally walked out. Perhaps the turnkeys and sentries were still celebrating the New

Year, old style. On Monday the 17th the Lord Justice-Clerk granted a warrant for her arrest, and the magistrates of Edinburgh issued a notice offering a reward of one hundred guineas for her apprehension. She is described as "middle sized and strong made; has a high nose, black eye-brows, and of a pale complexion"—a description which seems wilfully at variance with the received accounts of her beauty. She "went off on Saturday night in a post-chaise for England by the way of Berwick; and had on an officer's habit and a hat slouched in the cocks, with a cockade in it." On the 22nd the Government announced in the *London Gazette* an additional hundred guineas reward for her recapture. It is therein stated that Mrs. Ogilvy, disguised as a young gentleman, very thin and sickly, muffled up in a greatcoat, and attended by a servant, had passed through Haddington on Saturday at midnight, and had pushed on with four horses, day and night, from stage to stage, towards London. The *Gentleman's Magazine* records "that information was received at Mr. Fielding, the magistrate's, office, that on the Wednesday following she was at Dover in the dress of an officer, endeavouring to procure a passage to France"; and in a later report, that having failed to do so, she "returned from Dover to London, took a hackney coach to Billingsgate, got on

board a Gravesend boat, with a gentleman to accompany her, agreed with a tilt boat there to take them over to France for eight guineas and a guinea a day for waiting for them four days in order to bring them back; which tilt boat landed them at Calais, but is since returned without them." This, of course, was a device to gain time and baffle her pursuers.

But tradition gives a more probable account of Katharine's escape from the prison. Her uncle, Mr. William Nairn, a well-known and respected member of the Scots bar, was at that time Commissary Clerk of Edinburgh. He was raised to the Bench in 1786 with the judicial title of Lord Dunsinnan, and in 1790 succeeded to the baronetcy, which, on his death in 1811, became extinct. His lordship is said to have contrived his niece's freedom. Sir Daniel Wilson, in his *Memorials*, states, upon the authority of Charles Kirkpatrick Sharpe, that Katharine walked out of the Tolbooth "disguised in the garments of Mrs. Shiells, the midwife who had been in attendance on her and added to her other favours this extra-professional delivery." James Maidment, in *Kay's Portraits*, tells the same story, with the additional particular that Mrs. Shiells had feigned toothache for some days before, and muffled her head in a shawl. The doorkeeper, according to Chambers's

Traditions, knowing what was afoot, gave the fictitious nurse a slap on the back as she left the prison, and bade her begone for "a howling old Jezebel." Sharpe owed his own introduction to the world to the good offices of this benevolent dame, who, as Chambers notes, was still practising in Edinburgh so late as 1805.

There are various accounts of Katharine's adventures after she had successfully "broke prison." Sharpe says that in her confusion she "risped" at Lord Alva's door in James's Court, mistaking the house for that of her father's agent, when the footboy who opened the door recognised her, having been present at the trial, and immediately raised an alarm. As the case was heard *in camera*, this lad must have been exceptionally privileged. Her uncle's house was in a tenement at the head of the Parliament Stairs, the site of which is now occupied by the Justiciary Court-room. Thither, says Sharpe, Katharine fled, and was concealed in a cellar by Mr. Nairn till the hue and cry was over, when his clerk, Mr. James Bremner, afterwards Solicitor of Stamps, accompanied her to the Continent. Maidment, on the other hand, states that on the night of her escape a carriage was in waiting at the foot of the Horse Wynd, in which she and Mr. Bremner at once left the city. In view of the contemporary evidence there is little doubt that

this is the correct version of her flight. She probably assumed the officer's dress *en route*. Chambers says that the coachman had orders, if the pursuit waxed hot, to drive into the sea so that she might drown herself. The contingency, fortunately for her fellow-traveller, did not arise. Thus Katharine vanished from the ken of her contemporaries, and history knows nothing certain of her fate.

"Was she guilty, was she innocent, and, if innocent, why did Lieutenant Patrick Ogilvy buy arsenic at Brechin?" asks Mr. Andrew Lang; and indeed these are "puzzling questions," which every reader must answer for himself.

Wilson states that Mrs. Ogilvy went from France to America, married again, "and died at an advanced age, surrounded by a numerous family." Maidment says she was afterwards "very fortunate, having been married to a Dutch gentleman," with satisfactory results, as above. Alternatively, she took the veil, and, surviving the French Revolution, died in England in the nineteenth century. Chambers marries her happily to "a French gentleman," and credits her with the usual large family. Similar vague surmises are still current regarding the aftermath of Madeleine Smith.

The only fresh light which the present writer has been able to discover is derived from the following sources: a paragraph in the *Westminster Magazine*

of 1777—"Mrs. Ogilvie, who escaped out of Edinburgh jail for the murder of her husband, is now in a convent at Lisle, a sincere penitent"; and an unpublished MS. note in a contemporary copy of the trial—"Catherine Ogilvie or Nairn did not marry a French nobleman as was at one time reported. She entered a convent and remained there until the troubles consequent upon the French Revolution compelled herself and the other inmates to fly to England, where she died. My informant, Mr. Irvine, lawyer of Dunse, tells me that a friend of his saw her tomb, with the name 'Catherine Ogilvie' upon it; and that upon enquiry the superior mentioned that of all the females in the convent she was the most exemplary in every respect."

Of the others concerned in the tragedy, the unconscious infant died in the Tolbooth within two months of her birth. She is said to have been "overlaid," but by whom is not recorded. The mother was then in France. It is satisfactory to learn that Alexander Ogilvy took no benefit from the child's death, for on 1st March, 1766, the anniversary of Anne Clark's arrival at Eastmiln, that bold spirit was arrested for bigamy, and was in his turn committed to the Tolbooth. One might have expected that Anne would be the redundant bride, but from his indictment it appears that the favoured lady was a Miss Margaret Dow, daughter of an officer

of the Royal Highlanders, unlawfully espoused by him so lately as 24th February. Upon his trial on 4th August, Alexander pleaded guilty to the charge, and was banished for seven years. He was allowed, however, to remain two months in Scotland to settle his affairs, which he effectually did in the following manner: while leaning over the window of a house in one of Auld Reekie's towering *lands*, he lost his balance, fell out, and was killed on the spot. Thus only Anne Clark and old Lady Eastmiln withstood the changes of that eventful year. "Their conversation must have been rich in curious reminiscences," like that of Lady Bothwell and her first love, Ogilvy of Boyne, when they came together at the end of the chapter.

The case of Katharine Nairn is one of the most attractive in our criminal annals, and should this imperfect summary be the means of sending a stray reader to the report of the trial itself, he will not go unrewarded.

KEITH OF NORTHFIELD

SOCIETY IN SCOTLAND HAD A SUFFICIENCY of scandal to furnish topics for many tea-tables in the summer of 1766. In March of that year, the beautiful Katharine Nairn, then under sentence of death for the murder of her husband, made her picturesque escape from the Heart of Midlothian, not

without suspicion of her uncle's connivance, himself being a senator of the College of Justice, and successfully fled to that *plaisant pays de France*, where they order some matters better, as Mr. Yorick remarked. The Douglas Cause, that huge, unwieldy lawsuit, was at length well under way, and the portentous pleadings began in July their three weeks' course before "the Fifteen" at Edinburgh, amid the intense excitement of a perfervid people, bets to the amount of £100,000 being laid upon the result. That same month provided a fresh sensation: Mrs. Keith of Northfield, in Banffshire, and her son William were, on the information of the laird, her stepson, arrested for the murder of his father ten years before within the house of Northfield.

"The singular circumstances of this case," observes a contemporary pamphleteer, "the atrocious nature of the crime, the great distance of time since that crime is said to have been committed, together with the doubtfulness and uncertainty of the evidence, have excited the curiosity of the public"—and incidentally inspired his pen. And though the world has long since ceased to concern itself as to whether the widow and her son were cold-blooded assassins or the innocent victims of family spite and medical ignorance, their trial may still be read with interest, as affording a quaint picture

of the Scottish life of its day, and as an instructive problem in the niceties of presumptive proof.

Alexander Keith, the late laird—old Northfield, as he was termed at the trial, to distinguish him from his son and successor—was born in 1692, and was thus "three score and three years when he died" on 21st November, 1756. Some twenty years before his death, Northfield, a widower with a son and daughter, had married a girl named Helen Watt, the daughter of a fisherman at Crovie, a village in Banffshire, who bore him several children, and with whom, as she afterwards alleged, he always lived very happily. Their union, however, had other and less pleasing results, for the marriage was deeply resented by the family of the first wife, whose brother "thought it a most disgraceful one." It led to a complete estrangement between old Northfield and George Keith, his son and heir, who quarrelled with his father on the subject, and left home in consequence, nor were they ever reconciled during the old man's life. The laird's brother and sister, John and Anne Keith, who lived "about three rig-lengths distant," continued upon friendly terms with their relatives at Northfield. The daughter of the first marriage later made her own experiment in matrimony, so that in the month of November, 1756, the household consisted, in addition to the servants, of the laird and his second wife and their

five children—William, aged 17; Henrietta, 15; Elizabeth, 13; Alexander, 10; and Helen, 7. Old Northfield, it was alleged, had early in life contracted a habit of excessive drinking, which gradually impaired his health, and being persisted in for a long course of years, at length ruined a constitution naturally sound. Be that as it may, there is evidence that during the autumn of 1756 the laird's health was in a critical condition. His brother, John Keith, deponed "that he had been long in a valetudenary way," and considered himself "a-dying"; while his medical attendant, Dr. Chap, surgeon in Old Deer, stated that he professionally visited the laird, who was suffering from "an asthma, attended with high fever," until the week before his death, when he found him so ill that he also "thought him a-dying." The doctor, who seems to have been an easy-going practitioner, added that in these circumstances he desired Mrs. Keith not to send for him again unless her husband "grew better," and took his departure, leaving the patient to the care of Providence.

Old Northfield, having thus had his own belief that his days were numbered fortified by the expert opinion of the faculty, prepared like a prudent man for the inevitable end. In view of the attitude adopted from the first by his eldest son George towards his father's second wife and family, and of the

unforgiving temper which that young man had since exhibited towards himself, the laird well knew that he could trust little to his heir's generosity or good feeling in regard to the future of his widow and younger children. In order, therefore, to secure for them some provision after his death, he decided to make a will settling upon them certain small sums of money, by no means beyond what his estate could easily bear. Accordingly, a few days before his death, Northfield sent for his old friend the Reverend James Wilson, minister of Gamrie, who at his request wrote out for him a short document embodying this intention, which was duly signed by the testator in presence of his neighbour, Mr. Garden of Troup, and his own servant, William Taylor, who subscribed the deed as attesting witnesses. It was admitted that the execution of this will was the voluntary act of the laird, and that the provisions therein contained were equitable, and such as his estate could well afford. Nevertheless, as afterwards appeared, the granting of these sums, small though they were, gave great offence to his successor.

In the evidence led at the trial we have glimpses of the old man on what was to be his last day in this world. Mr. Wilson, the minister, called in the afternoon to see the invalid, and found him looking better. Northfield, who appears to have borne his

bodily infirmities with a cheerful spirit, talked to his reverend visitor "in his usual jocose manner." The minister thought him "to be past danger." William Taylor, the servant who had witnessed the will, having finished his day's work, went up to ask for his master. The laird, though confined to his room, apparently did not keep his bed; he was "sitting in the chair with one leg above the other, and a pinch of snuff between his finger and thumb," and remarked that he was feeling better. George Gelly, a friend, afterwards looked in before dark to inquire for him, and saw him "sitting in the chair and not very well." They talked together for a while, and Northfield laughed several times in the course of the conversation. The last caller, one James Manson, shoemaker in Gardenstoun, came that evening as usual to shave the laird, who "was sitting in his night-gown, not well." That night Northfield, as seems to have been his custom during his illness, supped in his bedroom with his wife and their five children. We are told that he took "a very little supper, either of aleberry or kail-brose," which, in view of his condition, is not surprising. What little he did eat seems to have disagreed with him, for he complained of feeling worse, and asked to be put to bed. The bed was accordingly made ready, "a blanket was warmed and put about him," and the old man was helped into bed by his wife

and her eldest son, William. The supper dishes having been removed by the servant, the laird "desired his children to go to bed, for that he wanted to be quiet." The two eldest girls, Henrietta and Elizabeth, then bade their parents good-night and went to their own room.

As to what afterwards happened we have no information except the declarations of the widow and her son, emitted later with reference to the charge of murder brought against them by George Keith. In considering these, it has to be kept in view that although they were made ten years after the event, by two persons, suddenly seized and separately examined upon the most dreadful of charges, they are nevertheless strikingly uniform and consistent. The laird having told his wife that he was afraid he would die in the night, she insisted that the boy William should remain in the room, to be at hand in case his father grew worse, and the old man "desired him to lye down at his back to see if he could gather any heat." Mrs. Keith then went to bed herself, along with her two youngest children, Alexander and Helen, "in a bed at the end of the deceased's bed," and the lad, having "thrown off all his clothes but his breeches," blew out the solitary candle and lay down beside his father. He noticed that the old man's breathing was barely perceptible, and spoke to him twice, but

received no answer. He then jumped out of bed, and "calling out hastily in surprise to his mother to rise and light the candle, for his father was either dead or dying," ran to the door to summon the two elder girls and the maid. They entered the room as Mrs. Keith was relighting the candle.

Meanwhile, as appears from her evidence, the servant, Elspeth Bruce, was in the kitchen immediately adjoining Northfield's bedroom, from which it was divided by "a timber partition." She said she heard no sound in the bedroom that night. After supper Henrietta Keith came into the kitchen and told her that the laird "was sitting ben yonder, and that he had taken two spoonfuls of brose to his supper"; and "in a little time after the cry came ben that he was dead." Elspeth then ran into her master's room, where she was joined by the two girls. The subsequent events as spoken to by her are, with the exception presently to be noticed, in accordance with the declarations of Mrs. Keith and her son. Neither Henrietta nor Elizabeth were called as witnesses at the trial, and the children, Alexander and Helen, were too young to be examined. William declared, that when the others came in and the candle was lighted, he looked at his father's face and saw "one eye shut and another open; his lips quivered a little, and he could just be observed to breathe." Mrs. Keith said that she

herself did not then look at her husband, as she "expected he would come alive again," but that Henrietta did so, and told her that "she saw her father's lips moving." Elspeth says she looked at her master, "and found him in appearance dead in the bed." William states that he then sent her for William Spence—apparently one of old Northfield's men—"who was drying corn at the kiln," and that she returned with Spence forthwith, by which time "the deceased's breathing could not be observed, and the eye that was formerly open was partly shut." Elspeth says nothing of this incident, and Spence was not produced as a witness at the trial. Probably he was dead, for the prisoners' counsel afterwards, with justice, complained that the defence had suffered greatly by reason of the ten years' delay in bringing the charge, owing to the death of several witnesses "who would have been of the most material consequence in their exculpation." Elspeth, according to the story of the mother and son, was then dispatched to bring John and Anne Keith, the laird's brother and sister, who lived at hand, which, as she admits, she did. Mrs. Keith declared, that when John Keith came, they both looked at her husband, and John "said he did not think but he was dead." John Keith, though examined at the trial, was asked no question as to this night's doings, which is the more curious as Elspeth

had stated that when she returned at once with the Keiths, she found the laird's body already taken out of bed and "streikit upon a deal"—laid out upon a board; whereas both Mrs. Keith and William declare that this was not done until after the arrival of Northfield's brother and sister. Anne Keith had died some years before the trial, and was not amenable to earthly citation, but John could have told what actually occurred. The importance of this point is, that while we have plenty of evidence as to the appearance presented by the body next day, there is none as to its condition on the night of the death.

Northfield breathed his last about ten o'clock on the evening on Monday, 21st November, and that night there was no suspicion whatever that he had not died in the natural course of his disease. It is therefore instructive to see from what quarter the first suggestion of murder came. We do not know where George Keith lived, but it must have been in the neighbourhood, for he had early information of his bereavement, and lost no time in coming to look after the inheritance. He entered the house of Northfield, to which he had been so long a stranger, on the morning after his father's death, and it is probable that not till then did he learn of the provisions of the will. Now the sole foundation for the charge brought by him ten years later against the

mother and son was a certain discoloration of the skin upon the neck and breast of Northfield's body, seen on the Tuesday and Wednesday after his death. He was buried, as we shall find, on the forenoon of Thursday, and the "chesting" spoken to by some of the witnesses probably did not take place till the night before, as the coffin had to be made and the funeral arranged. The first we hear of the mysterious mark is in the evidence of Elspeth Bruce, who depones "That when George Keith, young Northfield, came next morning [Tuesday] and took a look at his father's corpse, he expressed some suspicion of foul play because of a blae [livid] mark round his neck." Elspeth, who obviously had heard no word of this before, then went into the room and examined the body, when she "saw a blae mark round the defunct's neck about the breadth of two fingers, and a blae spot upon his breast," which she thought "were strange circumstances." The other evidence of those who saw the marks is as follows: William Taylor, the late laird's servant, "saw a blue mark about his neck about the breadth of three fingers, but whether it went round the back part of his neck he cannot say, because he did not see that part." John Strachan, wright in Gardenstoun, who made old Northfield's coffin, stated that when the body was being placed in it, young Northfield turned down the grave-clothes "and showed the

deponent a mark round the fore part of the defunct's neck, but whether it went round he cannot say, because he did not see the back part of his neck; that he also saw a mark upon the defunct's breast that reached down towards the slot of his breast; and that the marks were of a blackish blue, like the neck of a fowl newly strangled." James King, who assisted Strachan "to make the coffin for the late Northfield, and to put him into it," said that at young Northfield's request he looked at the body, and saw "a black red mark round the neck, such as the deponent never saw on any corpse before that time." Alexander Hepburn, in Cushnie, deponed that he inspected the body at the "chesting," being desired to do so by young Northfield, "who threw off or laid aside the dead cloaths from the upper part of the body." The first thing that attracted his attention was "some blue spots upon the breast"; the next thing he noticed was "a blue girth that went round his neck, like bruised blood; and on the back part of the neck he saw a mark like what is occasioned by a knot drawn strait."

The observations of Elspeth Bruce and William Taylor were each the result of a private view of the corpse, but the evidence of Strachan, King, and Hepburn has reference to one and the same occasion, namely, the "chesting," at which young Northfield, Mrs. Keith, the lad William, and appar-

ently John Keith, were present. This seems to have been the first time that the widow's attention was specially called to the marks. Hepburn states that she appeared unwilling to have the body inspected, saying "that there was nothing unseemly to be seen there." Taylor, however, depones "That no person, so far as he knows, was hindered from looking to the corpse." The same witness adds that he asked Mrs. Keith, in presence of John Keith "and others," what was the meaning of that mark, and that she answered that it was occasioned by a string tied round Northfield's neck "for holding on a plaister." John Keith, when in the witness-box, says nothing about this incident. Such was the explanation given by Mrs. Keith at the time, so soon as she was asked about the matter. Ten years afterwards she and her son gave in their declarations a more particular account of the circumstance. Mrs. Keith declared, "That she did not look at the body that night [of the death], but next day she assisted to put on a shirt on the body, and then she observed something blue about the back part of the neck, but cannot tell whether that blueness was round his neck or not; That she heard a plaister had been applied to the deceased's back or his neck; but when she assisted to put on the shirt on the dead body, as above, she cannot tell whether the plaister was on the body or not, or whether there

was any mark of a plaister upon the body or not; and that she can tell nothing more of her husband's death than is above mentioned." William is more specific: "Declares, that there had been a blistering plaister applied to the deceased's back; and after it was taken away, kail-blades [cabbage leaves] were applied to the place where the plaister had been; and in order to keep these blades in the proper place, they were tied on with the deceased's own garters, which went below the arm-pits, and round the farther side of the neck; and these kail-blades and garters continued in that situation after the deceased's death, until his grave-linen was made and put upon him. Declares, that he was present when the grave-linen was put upon the body; at which time some of the women who were there loosed the above garters, and took them away; and the declarant then observed a blue spot upon the left breast, about the breadth of three fingers, but did not observe anything about the neck, further than that there was a great swelling over his whole body. Declares, that from the time the deceased was put to bed the evening of his death, no person went near him until the declarant called to light a candle, as above; nor did the deceased make the least noise after he was put to bed."

Now someone must have helped to prepare the body for the grave, and whoever did so would be

likely to notice this curious arrangement of the garters, which can hardly have been invented by William. But throughout the trial no other reference is made to these "women who were there," unless it be that one of them was Anne Keith, who had died some years before, and, as was alleged for the defence, would have confirmed the prisoners' explanation as to "the innocent and accidental cause of these discoloured appearances on the dead body, which are the frail and only foundation of this prosecution." That the plasters, at least, were no creation of the young man's fancy is proved by the testimony of Dr. Chap, who depones that when he withdrew from the case as hopeless, he "left two blistering plaisters to put upon his [Northfield's] back." When and by whom the plaster and "kail-blades" were respectively applied, tied on, and taken off, who took away the garters and what became of them, are matters upon which the evidence throws no light.

It appears that there were "words" between the widow and the heir "about naming a day for the late Northfield's burial," Mrs. Keith proposing Thursday and George Keith wishing the interment postponed till Saturday. The widow carried her point. John Mair, a neighbour, who mentions this difference, states that before the funeral "he heard the said George require Elspeth Bruce to acquaint

him with the circumstances of his father's death; to which she made no answer, but turned about her back and wept. Upon which George said that as she would not tell then, she behoved to tell afterwards." Elspeth says nothing about this incident. Plainly, she had no suspicions till these were suggested to her by George Keith. William Taylor says in his evidence that George objected to the earlier date being fixed "before he had time to prepare matters for the burial"—not because he suspected foul play. Taylor, whose sympathies were evidently engaged in behalf of the prosecution, adds that on the night following Northfield's death he heard Mrs. Keith ask her son William what his brother George would get for his supper. Upon which William answered, "That a guidfull of the dog's meat was good enough for him; that he had no business there; and that, cursing his brother, he said that little hindered him to take a gun to shoot him." The lad may be excused this outburst of resentment against the new laird, who hitherto had ignored his existence, and now began their fraternal relations by accusing him of parricide. Neither is it surprising that the widow, after the insulting treatment she had received at and since her marriage, should resent the imputation of having murdered her own husband.

For what happened at the funeral, we have the

account of the Reverend Mr. Wilson. "Being invited to the burial of the deceased Northfield, he was taken up to a room privately by the present Northfield, who intimated to him his suspicions that his father had not got justice in his death." Here, as in all the other instances, the first suggestion of foul play is made by the heir. It is evident that George Keith sought to involve the minister in the responsibility of openly charging his stepmother and brother with murder, for he desired Mr. Wilson "to look to the dead body and give him his advice how he should behave." The good man perceived the snare thus artfully set for him, and declined to examine the corpse, "excusing himself by his ignorance in these matters"—he was no expert in the science of forensic medicine as applied to post-mortem appearances. He gave, however, the practical and judicious advice that if George thought anything was wrong he ought to consult a physician. "Upon this he was told by young Northfield that he had wrote Mr. Finlay, surgeon in Fraserburgh, and had got for an answer that he could do nothing single, and advising him to take the assistance of the two physicians at Banff." Dr. Finlay, who, by the way, if actually consulted as George alleged, was not produced as a witness at the trial, showed no anxiety to move in the matter; but why did not George, if he honestly

believed that his father had been strangled, call in Dr. Chap, the local practitioner in charge of the case until a few days before the death, who does not even appear to have been invited to the funeral? During this secret conclave, the last arrangements had been going forward, and the minister states that George, at this point of the conversation, having looked out of window, "observed that the corpse was gone, at which both of them were much surprised." They then left the house in pursuit of the funeral cortege, the young laird on foot and the minister on horseback. The following reference to what occurred on this occasion is contained in the evidence of Taylor, who depones, "That the present Northfield and Mr. Wilson, the minister, were in an upper room when the corpse was taken out of the house for the burial without acquainting them; that when they got notice that the corpse was removed, they followed; but it was a considerable time before they overtook the company; that Northfield was at the time in complete mourning; that the corpse was removed in the forenoon; and that the place of interment was at the distance of three or four miles." This incident is treated by the prosecution as affording one of the proofs of the pannels' guilt, but it is difficult to see what is its bearing upon the question whether old Northfield was or was not murdered. If the widow and her son

guessed the purpose for which George Keith was then closeted with the minister, it is very natural that they should have allowed the funeral to proceed without them.

The only other evidence we have regarding George's attitude at this time is that of his uncle, James Gordon of Techmuiry, brother of the first Mrs. Keith. This gentleman exhibited a strong animus against the woman who for twenty years had occupied the place left vacant by his sister in the affections of Northfield. He stated that he saw little of the laird after his second marriage, which he considered "a most disgraceful one," and that he was last at the house of Northfield on the occasion of his niece's wedding, solely to witness that ceremony, "but insisted that Helen Watt, Northfield's wife, should not be admitted." The mistress of the house would doubtless appreciate to the full this courteous stipulation, and it need not surprise us that Mr. Gordon received no invitation to the next family function, his brother-in-law's funeral. He added that some time after the laird's death he received from his nephew George a letter, "signifying a strong suspicion that his father was strangled by his wife and his son William, and desiring the deponent's advice how he should behave." Once again young Northfield lacked the courage of his conviction. Mr. Gordon wrote in answer, advising

him not to insist in any criminal prosecution unless he had clear evidence, which rather looks as if the uncle had not much faith in his nephew's detective genius.

There for the time this matter of the alleged murder rested; and not the least mysterious circumstance in the case is that George Keith did nothing further till ten years had elapsed, when he lodged the formal information against his relatives which resulted in their arrest. One would naturally expect that he was led to do so by the discovery of some fresh evidence which justified his former suspicions and at length warranted his making a specific charge, but such is not the fact. This point was well put by counsel for the defence in their pleadings at the trial: "It is hoped the Gentlemen of the Jury will not be inattentive to these disadvantages under which, from the long delay of this prosecution, the prisoners must necessarily labour in making their defence. We hope they will not fail to observe that the present Keith of Northfield neglected to exhibit any information to the public prosecutor while witnesses were alive who had the best access to know the true state of this matter, and has brought it now after their death when, at the same time, he cannot allege that any new evidence has presented itself."

How the widow and her young family fared

when they went out into the world, leaving the rightful heir in possession of the house of Northfield, and whether they ever received payment of the sums due to them under the will, we do not know, but uncertain glimpses of the mother and son may be descried in the evidence given at the trial. William, whose conduct as well before as after his father's death is said by his counsel to have been irreproachable, "employed himself in agriculture," and that with sufficient success to enable him at the time of his trial to support "a wife and a little family." He seems to have quarrelled with his mother, as we shall see from various angry scenes between them spoken to by the witnesses, and there is no doubt that Mrs. Keith's affairs, from whatever cause, were much less prosperous than those of her son. It appears from the evidence of James Duncan, in Whitefield, a shearer in William's employment, that in the harvest of 1761, five years after Northfield's death, his widow's circumstances were so far reduced that she "came to her son William and offered herself to him as a shearer, and that he rejected her services." We shall consider later the relations between William and his mother; in any view the picture thus presented is a pathetic one.

George Keith having for some inscrutable reason at last brought himself to denounce his relatives to

the authorities, the mother and son were apprehended by warrant of the Sheriff and lodged in the prison of Banff. The prisoners were respectively examined on 7th and 8th July, 1766, in presence of Mr. Alexander Dirom, Sheriff-Substitute of Banffshire, when they emitted separate declarations, and were duly committed for trial. They lay in Banff prison until 26th August, when they were removed to Aberdeen, where at a Circuit Court of Justiciary held by the Right Honourable Lord Kames, one of the Lords Commissioners of Justiciary, on Thursday, 4th September, "Helen Watt, widow of the deceased Alexander Keith of Northfield, and William Keith, eldest lawful son procreated betwixt the said deceased Alexander Keith and the said Helen Watt, pannels, were placed at the bar indicted and accused at the instance of James Montgomery, Esq., his Majesty's Advocate, for his Majesty's interest, for the crime of murder committed by them upon the person of the said deceased Alexander Keith, in manner mentioned in the Criminal Letters raised thereanent."

Henry Home, Lord Kames, a man of much learning and a voluminous writer, "who did more to promote the interests of philosophy and *belles lettres* in Scotland than all the men of law had done for a century before," was noted for his severity as a criminal judge. When at the bar he had acted

as counsel for the unfortunate Captain Porteous; and he was one of the judges presiding at the trial of Katharine Nairn in the preceding year, on which occasion he introduced the practice of charging the jury at the conclusion of the speech for the defence, a custom since universal but till then unknown. Lord Kames, however, is now best remembered in legal traditions on account of his familiar use of that monosyllable which Mr. John Willet so reprehensibly called up the stairs of the Maypole six distinct times, to the grave scandal of the cook and housemaid. The "Procurators for the Prosecutor" or counsel for the Crown were Mr. Cosmo Gordon, Advocate-Depute, and Mr. John Douglas, advocate; the "Procurators in defence" or counsel for the pannels were Messrs. Alexander Wight, Alexander Elphinston, and Robert Cullen, advocates. Wight afterwards assisted Henry Erskine in the famous but unsuccessful defence of Deacon Brodie on his trial before the great Braxfield in 1788.

The indictment set forth that the deceased having executed the will to which we have referred, the prisoners became "impatient" for his death; that Mrs. Keith "was heard to express wishes to that purpose"; that she and her son "did treacherously and wickedly conspire to murder" Northfield; and that "in pursuance of this their wicked intention," they, in the circumstances already men-

tioned, "did wickedly murder the said Alexander Keith by strangling him in his bed either with their hands or with some cord or rope or napkin or in some other violent manner," as appeared from certain marks of discoloration afterwards seen upon his body, "which could not have proceeded from the effects of any natural disease, if the said Alexander Keith had died without violence." It was further alleged that Mrs. Keith, "conscious of her guilt in the premises," attempted to conceal the marks from observation, invented the whole story of the plaster, and "to prevent further discovery" caused the body to be buried with unseemly haste "in a most indecent manner."

Both pannels having pleaded not guilty, counsel for the defence stated that while it was not proposed to offer any objections to the relevancy of the indictment, as the prosecutor did not pretend to bring against the prisoners any direct proof of this alleged murder, but meant by a train of circumstances to infer their guilt, "it had become necessary for the prisoners, in justice to themselves, to state the facts which had given rise to this prosecution as they truly happened, and as it was expected they would appear from the evidence to be brought. That this, they hoped, would remove the impression created against them by the frame of the Indictment, and would prepare the Gentlemen of

the Jury to attend equally to those circumstances which were to be proved in defence." Counsel then gave their clients' own version of the facts, from which we have quoted in the foregoing narrative. It was argued that in order to support the accusation there were two separate facts, of each of which it was necessary there should be clear and distinct evidence: firstly, that murder had been committed, and secondly, that the prisoners were guilty of that murder. Was it clearly proved that Keith of Northfield died a violent death? To establish his case the prosecutor relied mainly upon the marks seen upon the body some time after the death, but the jury would bear in mind that the appearances of dead bodies are often so various and extraordinary "that physicians of the greatest abilities and most extensive experience have declared themselves unable to account for their causes, or to determine with any degree of certainty whether they proceeded from a natural or a violent death." Besides the general uncertainty of such post-mortem appearances there was in the present case the further circumstance, "which should make us still more cautious to infer from such discoloured marks that Northfield's death had been a violent one," namely, that the body was neither seen nor examined by any surgeon or person of skill, but that these appearances were now to be described ten years after

the event by ignorant, inaccurate country folk, "by whom alone they are said to have been perceived." Physicians who admitted their own inability to determine the cause of such marks when seen by themselves would surely be less able to account for them from the description of ignorant and unskilful observers. The jury were cautioned against confounding the proof required regarding each of the two distinct questions before them. "They will reflect on the dangerous consequence of admitting circumstances tending to fix a crime on particular persons to supply the defective evidence of that crime's having itself existed. Circumstances of conduct in themselves the most innocent may, upon the supposition of a crime, assume a very suspicious appearance, which arises entirely from innocence that had rendered the conduct careless and unguarded. From circumstances, therefore, suspicious only upon the supposition of a crime's having been committed, to reason backwards and conclude from these that the crime truly was committed, is contrary to all just and fair reasoning, and surely inconsistent with that regular form of procedure which has been established for the protection and security of innocence." If, however, the jury came to the conclusion that a murder had been committed, they must carefully examine the evidence adduced to

prove the prisoners guilty of that shocking crime. Upon this branch of the case counsel dwelt upon the injury their clients had sustained by reason of the ten years' delay in bringing the charge. Many important witnesses necessary to their defence had died, and in particular Anne Keith, Northfield's sister, the loss of whose testimony was a great misfortune for the pannels, "as she was the only person, besides the two prisoners, who was constantly near the bedside of the deceased." The motive alleged in the present case was, counsel maintained, absurd and incredible. Even if the prisoners were wicked enough to be influenced by such a motive, in view of Northfield's age and serious illness the story was still highly improbable. "Can we believe that when they foresaw his death to be so fast approaching, they would thus wantonly inbrue their hands in the blood of a husband and a father merely to attain a few days, perhaps a few hours, sooner the possession of that pittance which he had provided for them?" On the contrary, it was far more to the pannels' interest that Northfield should survive, for while he continued in possession of his estate they were much better off than they would be when reduced to live on the inconsiderable provision which he had secured to them. There was no suggestion that Northfield wished to alter his will, and the only person having any interest to

induce him to do so was the heir, who lived at a distance and never approached his dying father. Counsel then made a powerful appeal to the jury on behalf of William Keith, pointing out the extreme improbability of a boy of seventeen, of previous good character, and "of all his other children the most beloved and favoured by his father," committing so atrocious and unnatural a crime. And when it was remembered that there was the greatest uncertainty whether any crime had been in fact committed at all, surely little doubt would remain concerning his innocence. If, however, the jury were satisfied he was innocent, they were bound to acquit his mother also; the two prisoners were the only grown persons in the room with the deceased at the time of his death, and if he were murdered, both of them must have been equally guilty of that bloody deed.

An interlocutor was pronounced by Lord Kames finding the libel relevant to infer the pains of law, and allowing the pannels to prove all facts and circumstances that might tend to exculpate them or alleviate their guilt. A jury consisting of local land-owners and Aberdeen merchants was then empanelled, and the trial proceeded. With most of the evidence adduced we have already dealt, excepting that which relates to certain incriminating expressions said to have been uttered by the pan-

nels on various occasions before and after Northfield's death, which we shall now consider. The first of these is spoken to by Elspeth Bruce, who says that the laird and his wife did not live comfortably together, but were often squabbling, "though she cannot say who gave occasion to their squabbling." On a certain day unspecified Mrs. Keith came "butt the house" in a passion and exclaimed, "God! that he [her husband] had broke his neck when he broke his horse's neck, and then she would not have got so much anger by him"—which hardly implies an intention to murder him herself. This is the only instance given by Elspeth, who of all the witnesses was the one most likely to know the facts. William Taylor deponed that a fortnight before his master's death Mrs. Keith said: "If God would not take her husband, might the devil take him!" and that the reason of her saying so was that Northfield "liked a dram too well and was spending too much." The lady plainly had a sharp tongue and an unweeded vocabulary; but how the laird contrived to be extravagant in his sickroom does not appear. Taylor adds that some time afterwards he heard William address his mother in the following enigmatic and unfilial terms: "That if it had not been her four quarters his father might have been living; that she never would get justice till she was hung up beside Wil-

liam Wast; and that he could be content to pull down her feet." On research I find that the gentleman referred to was executed at Aberdeen in 1752 for the murder of his wife, where his skeleton still hung in chains on the Gallowhill to give point to William's remark. Isobel Robertson stated that five or six years before, she, being a servant with Mrs. Keith, had occasion to know that William, who was then living with his mother and sleeping in the bed in which his father died, "was frightened with ghosts and apparitions," so that he got a lad to lie in the room with him for a night or two, and afterwards changed his bed. James Irvine, the lad in question, said that six or seven years ago his master, William Keith, complained that he could not sleep in his bed "because he was troubled," but did not say what he was troubled about. At his request the witness sat up with him in his room a whole night, after which William changed his bed. In cross-examination, Irvine admitted it was said that William was afraid of his brother George, but that he never heard that William was afraid of his father's ghost. James Boath, tailor in Banff, deponed that several years after old Northfield's death the pannels quarrelled in his house, "provoking one another by abusive language," when the mother said to the son: "Sir, I know as much of you as would get you hanged." Janet Watt, in

Crovie, apparently a relative of Mrs. Keith, stated that once, after a quarrel between the pannels "about milking cows," William observed that his mother was a liar, a thief, and a murderer. John Duncan deponed that when William refused to employ his mother as a shearer, as already mentioned, William said that she would not get justice till she was hanged. Here ends this unedifying testimony. If mother and son did in fact share that fatal secret, it seems unlikely that they would thus twit one another in public with their mutual guilt; more probably when they afterwards fell out, they found in the old suspicions a handy form of recrimination. In any view, William's conduct scarcely warrants the encomiums of his counsel.

The medical evidence adduced for the Crown was confined to that of a single witness, Dr. Alexander Irvine, physician in Banff, who dogmatically deponed that he never saw in the course of his practice such marks as those described in the case of Northfield "that he could suspect was occasioned by any sort of disease, without external violence," and that such marks could not be occasioned by any known disease. This evidence would have immense weight with a local jury. Now, in the year of grace 1766, and for many a long year afterwards, the ordinary country practitioner knew as little about the science of medical jurisprudence as he

did of wireless telegraphy. Not until 1806, by the efforts of the great Andrew Duncan, was the study of that subject officially recognised by the University of Edinburgh, when the first chair in the country was there founded. To-day, any final year's medical student knows that one of the commonest of all post-mortem appearances is just such hypostatic lividity as was seen upon Northfield's body the day after his death, and that neither plasters nor garters were necessary to produce it. Nay more, that had he been strangled, as was alleged, by the forcible compression of his throat with cord or handkerchief, the resulting mark would have been pale rather than blue, any livid appearance being above and below the line of constriction. Thus no competent medical man would nowadays peril his reputation by endorsing the scientific testimony of Dr. Irvine of Banff.

The Crown proposed to call as their last witness George Keith of Northfield, to whose evidence objection was taken on behalf of the prisoners that not only was he "the private informer and spring of the present prosecution," but he had likewise acted as an agent by assisting in the precognition —examination of witnesses—before the Sheriff, and had suggested questions to be put to the persons examined. The Court sustained the objection on proof of the fact, and refused to receive George

Keith as a witness, which is a matter of regret; for while the prisoners took no benefit from his exclusion, his deposition would probably have made plain many points otherwise obscure. Only two witnesses were called for the defence, John Keith and Dr. Chap, whose evidence has been already noticed. The jury was then addressed by the Advocate-Depute for the Crown and by Alexander Wight on behalf of the pannels, after which Lord Kames ordered the jury to be inclosed "in the laigh council-house," and to return their verdict at ten o'clock next morning. No record of the speeches of counsel has been preserved, nor does it appear from the report of the trial whether or not Lord Kames himself addressed the jury, though, as we learn from another source, it seems likely that his lordship did so.

Next day, Friday, 5th September, 1766, when the Court met, the jury "by a plurality of voices" found both the prisoners guilty, but in respect of William's youth and the presumed influence of his mother, they earnestly recommended him to the mercy of the Court. It is said that the jury deliberated for five hours before arriving at their verdict, which was by a majority, nine voting for guilty and six for not guilty. Burnett, in his *Criminal Law*, states that Lord Kames is said to have approved of this verdict; yet the case seems one in which even

the Scots form of Not Proven would have been inappropriate. After delivery of the verdict, Alexander Elphinston, one of the counsel for the defence, stated a plea in arrest of judgment. In those days when a pannel was once "remitted to the knowledge of an assize," that is, when the jury were sworn and evidence given, the trial could not legally be adjourned until they had delivered their verdict or were "inclosed" to consider it. Thus in a heavy case the Court had to sit continuously until that point was reached, and even our stalwart forefathers must have quailed before so terrible an ordeal. The worst feature of such a system was the injustice done to the prisoner; for after all parties had been occupied with the prosecutor's evidence, it may be for days and nights, there is little wonder that the case for the defence often received but scant justice. At the trial of Katharine Nairn, for instance, which lasted forty-eight consecutive hours, the jury became frankly bored, and requested the witnesses for the defence to "cut it short." The heavy strain upon the prisoners' counsel must also have unfairly handicapped the defence.

The objections now taken were that several of the jury had from time to time left the Court-room during the trial, and that in particular, one of them, Mr. Forbes of Skellater, actually went

outside, "and was seen on the street going in towards the New Inn," doubtless with a view to alleviate the dryness of the proceedings; and that Lord Kames himself had on one occasion quitted the bench. The Advocate-Depute justified these irregularities as regards the jury on humane grounds, and said that the judge had only gone to "the verge of the Court-house" for a breath of fresh air. Lord Kames repelled the objections, and intimated that he would defer sentence till the following day.

On Saturday, 6th September, the prisoners having been placed at the bar, his lordship sentenced them both to death, Mrs. Keith to be hanged at Aberdeen on 17th October, and William Keith on 14th November next. His lordship gave effect to the jury's recommendation in William's case by adjudging his body merely to be hung in chains upon a gallows on the Gallowhill of Aberdeen, whereas his mother's remains were to be delivered to Dr. David Skene, physician in Aberdeen, "to be by him dissected and anatomised." The Court then rose.

But, after all, the services of Dr. Skene were not required. At the instance of the prisoners' friends and of a numerous public, who considered the evidence insufficient to justify the verdict, their case was laid before the authorities in London, with

the result that sentence on Mrs. Keith was respited for four weeks, till the day fixed for William's hanging. On Sunday, 9th November, an express arrived at Edinburgh with a free pardon for both mother and son. It was announced that "His Majesty, upon some favourable circumstances having been represented to him, was most graciously pleased to grant a pardon to both the convicts." Such a decision was not at that period uncommon, for the first Georges were rather given to interfere in the affairs of the High Court, not so much in the interests of their Scottish subjects, as to show the Lords Commissioners of Justiciary that they were not masters in their own house. On this occasion, however, Farmer George did well to be merciful.

The trial was published on 22nd November at Edinburgh, though bearing to be printed at London. This was done to avoid the wrath of the judges, as there was prefixed to it an "Advertisement" in which, in the course of certain observations upon the value of presumptive evidence, the administration of the criminal law of Scotland, as exemplified in this particular case, was criticised with refreshing freedom. It is interesting to note that the writer takes exception to that dangerous innovation, the judicial charge, from which it would appear that Lord Kames had followed the precedent created by himself a year before on the trial of Katharine

Nairn. The curious will find in the *Scots Magazine* for September, 1767, a spirited reply to these strictures.

William Keith only survived his pardon a few weeks; he died on 22nd December following. What became of his mother is not known.

"ANTIQUE" SMITH

Some men has plenty money and no brains, and
some men has plenty brains and no money.
Surely men with plenty money and no
brains were made for men with
plenty brains and no money.

—APHORISM OF THE
TICHBORNE CLAIMANT

THERE IS SOMETHING SINGULARLY BASE IN the fabrication of personal written relics of the illustrious dead. Duncan is in his grave; treason has done its worst; nothing, says the poet, can touch him further; yet your literary ghoul will violate upon occasion the last silence, and furnish

for a pound or two the acceptance of Lady Macbeth's invitation to spend a night at Cawdor. For the acquirer of autographs to whom these are worth merely their market price, the discovery that, through lack of skill or knowledge, his wares include some sample of the forger's art, is sufficiently painful—he suffers in a tender place; but the worshipper of heroes who buys an old letter of a few lines in faded ink, bearing to be written by the object of his homage, is in a harder case. The busy hand that traced, as he believes, those characters upon the frail and perishable page has long since turned to dust. Its works, mayhap, in noble and permanent form survive, and that is much, but this is intimately more; here is some part of the man himself, a peculiar possession and delight. And to foist for gain upon the unwary enthusiast a heartless travesty of his treasure is surely the meanest of despicable deeds. But the forger is doubtless well advised thus to rob the living only at the expense of the dead; should he imitate the handwriting of some butcher or baker in being, his punishment, on detection, will be a very different one from that awarded in respect of such fraudulent traffic in the immortal names of Burns and of Scott. Verily, in his case, a dead lion is better (and safer) prey than a living dog.

On 22nd November, 1892, the *Evening Dispatch*,

an Edinburgh newspaper, presented to its readers the first of a series of articles which forms a notable chapter in the history of literary forgeries. In introducing the subject it was remarked that the question then publicly raised was one of national, even international, importance, which had long exercised a section of the literary world, namely, the authenticity of a mass of old MSS., chiefly Burns, Scott, and Jacobite, recently placed with amazing prodigality upon the market. The genuineness of these documents, it was said, had long been a subject of fierce contention among collectors, and the time and opportunity were ripe for tracing them to their source and determining once for all their truth or falsity.

This was the first intimation the general public received of the existence in Edinburgh of a manufactory of spurious autographs on a large scale, but the fact seems to have been well known to experts. Indeed, on reading the contemporary account of the exposure of these elaborate and extensive frauds one is struck by the circumstance that, although many dealers and collectors were aware of the wholesale forgeries and of the thriving trade long driven therein with impunity, but for the enterprise and public spirit of the *Dispatch* the career of the forger might have been indefinitely prolonged. Some of those concerned were doubtless

wilfully blind; others having been, as the phrase is, "had," preferred rather to suffer in silence than publish their losses to an unsympathetic world; and another class, who by their attitude delayed the day of reckoning, honestly believed genuine what they had paid for, and struggled against the light as an imputation either on their judgment or good faith. Scotland, too, had been singularly free from a form of crime of which the forged letters of Byron and Shelley, detected in 1852, was in England the last example, and the very effrontery of the fraud helped for a time to disarm suspicion.

It is here proposed briefly to recount the unmasking of the forger as effected by the agency of the *Dispatch*.

On 26th May, 1891, there appeared in the *Scotsman* an account of the sale by auction in Edinburgh of certain letters of Burns and other documents, known as the Rillbank Crescent Manuscripts, being the collection of one Mr. James Mackenzie, F.S.A. (Scot.). Before beginning the sale the auctioneer stated that while some people said they were forgeries and he said they were not, yet his word must not be taken for it: purchasers must judge for themselves. As the result of this depressing exordium the prices realised were disappointing. Five autograph letters of Burns, including a poem, brought between one and two guineas. A song in

his handwriting sold for thirty shillings, a discharge granted and signed by him, thirty-two shillings, and so forth. In the course of the subsequent controversy Mr. Mackenzie stated that the MSS. were perfectly genuine; "that they were not warranted *was for a purpose*, which proved that some who pretended to be judges of such were not so," on the analogy of the new sovereigns offered for 14s. 6d. on London Bridge, of which purchasers were shy—in both cases, it would seem, rather too costly a way of backing one's opinion.

This sale, however, did not exhaust Mr. Mackenzie's collection, for in August following there was printed in the *Cumnock Express*, an Ayrshire newspaper, an unpublished letter of Burns, the property of that gentleman, whom the editor vouched for as an industrious and intelligent collector of MSS. The letter, which was addressed "Mr. John Hill, weaver, Cumnock"—apparently an old friend of the bard—concluded with the curious expression, "Believe me, I did not intend to go beyond anything that was unfriendly (*sic*), and your communication has shown me that." So effectually had Mr. John Hill shuffled off this mortal coil that no trace or tradition of his ever having existed upon earth could anywhere be found, and a correspondent in the *Express* threw strong doubts upon the authenticity of the letter,

which he challenged Mr. Mackenzie to submit to the British Museum authorities. He further referred to the Rillbank Crescent MSS., and asked for the history of that remarkable collection. The correspondent, as afterwards appeared, was Mr. Craibe Angus of Glasgow, an eminent authority on Burns. To this Mr. Mackenzie replied, characterising the anonymous correspondent as a dealer whose craft was in danger, and maintaining that the John Hill letter was genuine, having been "attested fully by those who are thoroughly competent to judge, including a respected descendant of the author." Mr. Colvill-Scott, the well-known expert, next took a hand in the game, warning the public that the number of Burns and Scott forgeries in Scotland was then considerable, and urging that the letter be submitted to the British Museum; and the correspondent followed suit, offering to give a guinea to the Kilmarnock Burns Federation if the letter was pronounced genuine by those authorities. Mr. Mackenzie, in answer, denied that there was a large quantity of spurious MSS. upon the market—he had not seen one yet nor could he find one; the letter had been submitted to the most experienced critic known to exist, who was prepared to give his oath that Robert Burns wrote it; and for a change he proposed this time to have a song, "which may be followed by something more substantial." The

song "To the Rosebud," commencing "All hail to thee, thou bawmy bud," failed to convince the correspondent. He pressed for the history of its acquisition, and gave a concrete instance of a "£40 lot" of Burns MSS. recently bought in Edinburgh by a bookseller, who sold it in good faith to a customer, which was afterwards discovered to be spurious and as such returned.

The critics having proved less bawmy than the belated bud, Mr. Mackenzie, for their confusion, produced in the *Express* two other unpublished poems by Burns, to wit, "The Poor Man's Prayer," and certain verses written after hearing a sermon preached in Tarbolton Church, beginning "The Sophist spins his subtle thread," both of which he claimed were the genuine productions of our national poet, and as such would stand the strictest tests. The publication of two unknown poems by Burns attracted much attention, but, regrettably for Mr. Mackenzie, "The Poor Man's Prayer" was found, on research, to have already appeared above the name of "Simon Hedge, Labourer," in the *London Magazine*, September, 1766, at which date Robert Burns was a child of seven. After making every allowance for the earliest possible development of his genius, it was difficult to believe that the bard, however precocious, wrote in his seventh year the line "No lawless passion swelled

my even breast," while a reference to his prattling children playing round his knees seemed equally premature. Further, it appeared the Sophist had not spun his subtle thread fine enough to elude the tracing of his verses to a volume of poems by Dr. Roberts, Provost of Eton College, published in London in 1774; thus, unless he stole them, Burns had no more connection with the lines—really addressed to Jacob Bryant, Esq.—than they had with Tarbolton Church. Nay, more, the pseudonymous "Poor Man's Prayer," addressed to the Earl of Chatham, was itself included by Dr. Roberts among the other poems as his own work, without acknowledgment to the infant author.

Meanwhile, Mr. James Stillie, a veteran Edinburgh bookseller who dealt largely in Burns MSS. and enjoyed some local celebrity as a link with Sir Walter Scott, wrote to the *Express* that he had examined the John Hill letter, as to the genuineness of which he had no doubt. This was the prophet in his own country whom Mr. Mackenzie honoured above the English experts. How far his judgment justified that gentleman's confidence we shall see later.

Specialists were naturally anxious to inspect the mine from which such curious gems had been unearthed, and as Mr. Mackenzie had said the manuscripts could be seen at his address, Mr. Craibe

Angus and Mr. Colvill-Scott, accepting this informal invitation, called together for that purpose. They took with them specimens of spurious Burns MSS., borrowed by them for the occasion from two respectable Edinburgh firms. These Mr. Mackenzie inclined to think authentic—"We were not so complimentary to those he showed us," says Mr. Craibe Angus. There is, regrettably, a direct conflict of evidence between the parties as to what occurred at this interview. The visitors stated that when pressed to disclose the source of his Burns MSS. Mr. Mackenzie said he had found them in a secret drawer of an old cabinet; his version was that the MSS. thus discovered by him were not Burns MSS., but merely old medical MSS., and that he had told Messrs. Angus and Scott so at the time, which those gentlemen denied. Enlightened later by the revelations of the *Dispatch*, which included the fact that a permit presented by him to Edinburgh Town Council, purporting to have been granted by Prince Charles at Holyrood in 1745, was pronounced spurious, Mr. Mackenzie wrote to the press that he had dealt with the residue of his collection "as such documents deserve to be treated"; and so ended the episode known as the Cumnock Correspondence.

The publicity given to the matter by the *Dispatch* articles brought forth many interesting and

instructive facts. It appeared that a familiar old-book shop in George IV Bridge, Edinburgh, had been for some years the happy hunting-ground of an eccentric customer. His concern was mainly with ancient folios having fair and ample fly-leaves, while books bound in vellum had also for him an attraction quite irrespective of the quality of their contents. Though his purchases were necessarily bulky it was his homely habit, after paying for them on the spot, to carry them off himself; no persuasion of the obliging shopman could induce him to have them sent to an address in the ordinary way. The unusual consideration for others thus evinced by the amiable unknown created remark.

In 1886 a gentleman called one day at the shop in Bristo Place kept by Mr. Andrew Brown, a bookseller with whom he was in the way of dealing. This bookseller is to be distinguished from his eminent *confrère*, the late Mr. William Brown of Princes Street. Mr. Brown exhibited an album containing a number of letters and autographs, including those of Sir Walter Scott, Admiral Cochrane (Viscount Dundonald), Thackeray, and other great men, which he said had just been offered him for sale. After a cursory glance at the treasures in which the album abounded the gentleman inquired its price, and being told £1, instantly closed the bargain, believing he had chanced upon one of

those finds whereby the hopes of the collector are too rarely crowned. A man standing in the shop during this conversation, who, it appeared, was the owner of the album, then observed that he ought now to get more than the fifteen shillings he had asked for, whereupon the customer gladly paid a few further shillings, and departed with his prize. On another occasion Mr. Brown showed this fortunate customer certain historical documents, which he said he had obtained from the former owner of the album; but as these papers, if genuine, were obviously of great value, the gentleman very properly inquired how that person had become possessed of them, and the explanation furnished not commending itself to his mind, he, luckily for himself, declined to purchase.

The mysteriously low-priced album disclosed upon a closer inspection many points of interest. The pencilled descriptions of the items in the collector's autograph showed a striking similarity to the handwriting of the great names represented, and it was equally remarkable that the same family likeness pervaded the writing of men of characters so diverse as Scott, Hogg, Cochrane, and John Bright. Apart from this general resemblance there were other peculiarities common to collector and collected; Thackeray, for instance, having by a strange oversight omitted from the word "philo-

sophical" the second "i," that the writer of the docquet should make the same mistake was a curious coincidence. In short, one and all of the autographs were plainly spurious.

The methods of the forger in disposing of his wares ingeniously varied. Sometimes he submitted them personally or by letter to likely purchasers, sold them to booksellers of inexperienced judgment, or left them for sale with more cautious members of the tribe; sometimes he sent his goods to public auction-rooms, or when times were bad and the supply exceeded the demand, pawned them for what he could get. As he did not trouble himself to redeem his literary pledges, in due time they found their way into the sale-room. At one of these sales in 1890, a well-known Edinburgh bookseller bought in the ordinary course of business a parcel of such pledges, including Burns, Scott, and Jacobite MSS., letters of Oliver Cromwell and divers great men, together with certain books of no intrinsic value, but enriched with autograph inscriptions by Scott, Carlyle, and other authors. After the sale the various lots were carefully examined by their new owner, who was forced to the painful conclusion that he had indeed purchased, as the phrase is, a pig in a poke, with the results proverbially attending that transaction. Many of the lots were docqueted as having been bought at the

Whitefoord Mackenzie sale, with the prices there paid for them. Now the sale at Chapman's Rooms in 1886 of the library of the late Mr. John Whitefoord Mackenzie, W.S., was a very different affair from that of the Rillbank Crescent Manuscripts. The library was one of the finest and most valuable ever offered by public sale in Scotland; the sale lasted twenty-eight days, and the catalogue—a portly volume containing 8935 lots, many of great rarity and price—became a handbook for collectors. It need not surprise us to learn that on reference to this authority the bookseller found in every case the docquets impudently lied; no such items had been included in that sale. But certain of the documents and books indubitably bore the familiar Whitefoord Mackenzie book-plate. This was explained by the fact that in so large a library were many volumes of minor value which sold for a few shillings; these contained the book-plate, which the forger removed and affixed to his own works, to give, in the phrase of the distinguished Japanese official, Pooh-Bah, artistic verisimilitude to a bald and unconvincing narrative of their acquisition.

Some of the spurious documents had attached to them cuttings from catalogues descriptive of their pretended character and value. One of these corroborative details, affixed to a proclamation by the Earl of Mar issued during the Rising of 1715, by a

curious chance led to more light being thrown upon the dark business in question. The cutting was recognised as from the catalogue of a sale at Chapman's Rooms in 1887 (of which we shall hear again), and the auctioneer on inquiry, referring to his books, found that the item had been purchased for £3, 10s. by Mr. James Stillie, the veteran voucher for the John Hill letter. The *Dispatch* promptly challenged Mr. Stillie to state whether he still held the document, or, if not, to whom he sold it, as they believed and averred that the MS. was not, though purporting to be, the one bought by him in 1887. That gentleman, however, declined to be drawn; doubtless he was much occupied at the time by a matter of more importance. Mr. John Stewart Kennedy, the wealthy American banker whose name is remembered in connection with the *Murthly Estate* case, had purchased from the patriarch for £750 a quantity of alleged Burns and important historical MSS. for presentation to the Lenox Library, New York. Their authenticity had never been impugned, but the recent revelations caused a very natural anxiety on the point. Accordingly, the collection was sent by Mr. Kennedy to this country for examination by the British Museum experts, who, having inspected upwards of two hundred documents of which it consisted, reported that only one was genuine, all the rest being

manifest forgeries. It was interesting to find from the historical MSS. that Mary, Queen of Scots, Rob Roy, and Claverhouse all used the same make of paper.

This was not the first occasion on which Mr. Stillie had the misfortune to differ in judgment from the London authorities regarding the genuineness of the manuscripts in which he dealt, and he had issued a leaflet headed "Manuscripts—English Experts," denouncing those gentlemen in unmeasured terms. Upwards of 300 original MSS. of Burns alone, he said, had in the course of business passed through his hands—for his customers' sake it is to be hoped that these included a larger proportion of genuine documents than those which he sold to Mr. Kennedy. In the case of a sale by him to Mr. W. W. Caddell of Manchester in 1889 of certain Burns and Scott letters, these were, on later scrutiny by experts of repute, pronounced to be palpable forgeries; yet Mr. Stillie refused to refund the money, on the ground that having known Sir Walter Scott for upwards of fifty years he was a better judge of his handwriting than any professional expert. Mr. Caddell, in the course of the correspondence which ensued, remarked that to have enjoyed the friendship of Scott for so long a period the veteran must have known him since he was ten or eleven years old, and must himself be

at that time upwards of 107. This is the longest link with Sir Walter of which we have any record. No legal steps were taken by Mr. Caddell to enforce repayment; Mr. Kennedy, however, went further. He raised in the Court of Session an action against Mr. Stillie for recovery of the price paid by him for the Burns and other MSS. The defender denied that he had represented the documents to be genuine, and also denied that they were forgeries. Mr. Kennedy, yielding to repeated appeals addressed to him by Mr. Stillie on the ground of his advanced years and the state of his health, and considering his protestations of entire good faith and strict honesty in the transaction, authorised his law agents to drop the action, which was accordingly done.

The publication by the *Dispatch* of facsimiles of some of the MSS. pawned by the forger furnished an important clue. A reader recognised the writing of the false docquets as bearing a striking resemblance to that of a clerk named Smith whom he casually employed, and specimens of this person's penmanship supplied to and published in the *Dispatch* left little doubt that the same hand was responsible for both. Alexander Howland Smith, the man in question, who lodged at 87 Brunswick Street, Edinburgh, was, it appeared, thirty-one years of age. His ostensible occupation was that of

a copying clerk, in which capacity he was occasionally engaged in various law offices in the city. He was described as of dull appearance, but plausible and insinuating address, and as possessing an intimate acquaintance with the lives and works of Burns and Scott. Among his friends he was known as "Antique" Smith, from the fact that he had constantly about him old documents or other curiosities for sale. In the course of an interview with a *Dispatch* reporter Smith frankly explained how he acquired his literary and historic treasures. He was at one time clerk in the office of the late Thomas Henry Ferrier, W.S., whose father had been agent for several great families. In such a business a large quantity of old papers had accumulated, and, according to Smith, Mr. Ferrier told him to clear these out and destroy them. Instead of doing so, however, Smith took the papers home, and discovering among them many documents of value, he from time to time converted these into cash. He was content to dispose of his documents to certain booksellers at prices ranging from one to fifteen shillings on the spot, rather than wait for the larger return to be obtained by dealing personally with collectors. Finding a ready market for genuine MSS., Smith, when the original store became exhausted, replenished his stock by providing counterfeits. He claimed that on due notice he could supply

any kind of ancient MS.; the demand was constant, but he was able easily to meet it. Such was his own account of the transactions. The scene of his literary labours was a little summer-house connected with some model gardens situated behind Hope Crescent in Leith Walk. "He is said to dread prosecution for his part in the traffic," wrote the *Dispatch;* "though he doubts if positive proof that he manufactured MSS. can be adduced." These doubts the subsequent trial and conviction must have gone far to remove. Whether or not Smith ever had in his possession any genuine MSS. at all is uncertain; probably on this, as on other points, he lied. In view of the circumstances in which he left Mr. Ferrier's employment in 1884—he was charged with stealing two cheques from the office—that gentleman would doubtless think Smith had already taken documents enough.

On 5th December, within a fortnight of the *Dispatch's* "First Blaste" against the scandalous prevalence of forgery, the authorities—not those alien ones of the British Museum, contemned by Messrs. Stillie and Mackenzie, but the local experts of the Criminal Investigation Department—at last intervened in the controversy by arresting Smith on a magistrate's warrant, and next morning that ingenious gentleman was in the Police Court for-

mally remitted upon the charge of uttering forged documents as genuine.

The columns of the *Dispatch* continued open to the discussion of how far the collecting public had been duped, and many interesting sidelights were thrown upon the methods of the forger and the extent of his practice, of which considerations of space here forbid an account. The *Athenæum*, in an article dealing with the mischievous and widespread effects of the fraud, observed: "Spurious documents, including letters of Queen Mary, Claverhouse, Jacobite chiefs, Walter Scott, and Thackeray, inedited poems by Burns, etc., have been for the last five years scattered broadcast over Scotland and England, the United States, and the Colonies. The *Dispatch* will probably reprint in some separate form the whole story, together with numerous facsimiles of the documents and of Smith's handwriting. It will form a useful vade mecum for the amateur collector of literary curiosities." Unfortunately this was not done, and the only separate account of the matter, so far as known to the present writer, is the chapter entitled "Wholesale Forgeries Perpetrated in Edinburgh," contained in Dr. Scott's valuable work, *Autograph Collecting* (London, 1894). The treatment of the subject there is necessarily brief, and the ashes of

the controversy still remain buried in the files of the *Dispatch*. It is satisfactory to note that Dr. Scott, who personally examined many of the forged MSS., remarks, "There is no evidence whatever to show that a person of common sense possessing the most elementary knowledge of autographs need have been deceived, or anything that should cause the average collector to be at all nervous about his treasures." The author gives some useful hints respecting the characteristics of genuine autographs of Burns and Scott as contrasted with those of the laboured and clumsy imitations.

Although the *Dispatch* had picturesquely described the spurious MSS. as executed with a skill compared with which the forgeries of Chatterton and Ireland were but infants' efforts, it is plain that the view expressed of the forger's executive ability is much too favourable. He displayed upon occasion a kind of cynical carelessness. One of the Burns letters, for instance, had been sealed, and attached to the wax was a piece of paper, apparently torn from the sheet when the letter was opened; on examination, however, this was found too large to fit the place from which it should have been torn, and was, moreover, of quite a different texture. By a curious coincidence numbers of letters written by all sorts of distinguished people from 1757 to 1858 began and ended with the same form of words. A

copy of the Solemn League and Covenant on parchment, bearing to be two hundred years old, was pronounced by Dr. Joseph Anderson, secretary to the Society of Antiquaries of Scotland, obviously to have been "written yesterday." The Kennedy and other historical MSS. were by persons learned in Scottish history proved on internal evidence false, by reason of the gross and ignorant blunders, chronological and factual, in which they abounded; and this apart altogether from technical questions of age, handwriting, etc., with regard to which it was also found by scientific tests that documents ranging from 1644 to 1793 were written in similar ink and with a steel pen!

On 14th December the prisoner, having emitted a declaration, was committed for trial, and on the 16th a petition was presented on his behalf to the High Court of Justiciary, craving the Court to restrain the *Dispatch* from publishing further articles on the subject until after his trial. Mr. Dewar, advocate, in support of the application, stated that since 22nd November a series of articles had been published by the *Dispatch*, entitled "Great Forgeries of old MSS.," in which Smith was named as the forger; his methods and appearance were described, and his address and photograph given, together with representations of his handwriting as compared with the writing of the forged MSS.

Notwithstanding his apprehension and committal the *Dispatch* still continued to publish articles similar in their nature and tendency, and calculated to prejudice the prisoner in his defence. On 9th December an article appeared, headed "The MSS. Forgeries," and similar articles had been published every evening since that date. The continued publication of these was highly injurious to the accused, and he asked the Court to prohibit the *Dispatch* from circulating any further statements relative to the alleged forgeries until the prisoner should be tried. The Court ordered the petition to be intimated to the respondents—the editor, the publishers, and the proprietors of the *Dispatch*—and ordained them to appear by counsel at the Bar next day.

Accordingly, on 17th December, Mr. F. T. Cooper, advocate, appeared for the respondents, the prisoner being represented by Mr. Dewar. Mr. Cooper objected to the form of the application as incompetent, and disputed the right of the Court to interfere with the publication of anything that a newspaper chose to publish, so long as it did not amount to contempt. It would be contempt if the *Dispatch* criticised the evidence against the petitioner and insinuated that he was guilty, but since the date of his arrest they had been careful to omit his name from all discussion of the MSS. frauds.

Mr. Dewar contended that in this matter the Court had jurisdiction, and founded on the case of *Edmond* (7th December, 1829, Shaw's *Justiciary Reports*, p. 229). Such articles as "The Forger and His Prey," published on 9th December, and "The Investigations of a Chemical Expert," on the 16th, though not referring to Smith by name, must, if read by persons who should sit upon the jury, unfairly prejudice his case. The Lord Justice-Clerk (Macdonald), in giving judgment, observed that the application was plainly competent. Apart from the clear precedent in the case of *Edmond*, his Lordship had no doubt that so soon as a person was placed by a magistrate in the hands of the authorities to be tried for an offence, he was under the protection of the Court, and was entitled to ask the Court to secure him against anything which might prejudice the public mind and prevent him having a fair trial. After referring to the very important service rendered by the recent discussion in the *Dispatch*, his Lordship said that once a person was charged and committed for trial with reference to matters which a newspaper had brought to light, all that ought to be effected by the work of a public journal was at an end; the investigation was then in responsible official hands. His Lordship therefore proposed to pronounce such an order as would prevent any further comments which might be

prejudicial to the prisoner. Lords Trayner and Kincairney concurred, and the Court pronounced an interlocutor prohibiting the respondents from publishing or circulating statements relative to MSS. or signatures alleged to have been forged by the petitioner, until the proceedings against him had been brought to a conclusion.

On Monday, 26th June, 1893, Alexander Howland Smith was placed at the Bar of the High Court of Justiciary, charged with selling and pawning spurious MSS. as genuine. The Lord Justice-Clerk presided, Messrs. U. R. Strachan and J. A. Reid, Advocates-Depute, conducted the prosecution, and the prisoner was represented by Messrs. Dewar and Grainger Stewart, advocates. The trial is reported in the first volume of Adam's *Justiciary Reports*. The indictment bore that the pannel had formed a fraudulent scheme of obtaining money from others by fabricating manuscripts of apparent historic or literary interest, and disposing of these as genuine to parties who might purchase the same or take them in pledge. There were four separate charges against the pannel, namely—(1) on various occasions between 1st January and 31st August, 1892, pretending to Andrew Brown, bookseller, 15 Bristo Place, Edinburgh, that fifty-three manuscripts were genuine, and that he had obtained the same from the office of the late Thomas Henry Ferrier,

W.S., and thus inducing Brown to purchase them at various prices to the prosecutor unknown, he (Smith) knowing the documents to be false and fabricated by himself, and appropriating the proceeds to his own use; (2) on certain dates between 18th August, 1888, and 31st May, 1889, pretending to George Taft, manager of the Equitable Loan Company of Scotland, Milne Square, Edinburgh, that thirty-two manuscripts were genuine, and that they had been bequeathed to him by his uncle, Mr. Ferrier, and thus inducing Tait to take the same in pledge and advance £24, 2s. on security thereof; (3) on certain dates in August, 1889, pretending to James Williamson & Sons, pawnbrokers, 98 Rose Street, Edinburgh, that ten manuscripts were genuine, and thus inducing him to advance £6 in security thereof; and (4) on certain dates in September, 1889, obtaining by similar means from James Mullan, pawnbroker, 25 South Bridge, Edinburgh, 15s. on security of three manuscripts. Annexed to the indictment was a list of 170 productions, chiefly MSS., and a list of forty-seven witnesses cited for the Crown. Among the productions were four volumes of *The Autographic Mirror* —a useful text-book for students of forgery—and an extensive collection of ink-bottles, penholders, and other literary requisites, from the prisoner's rural retreat behind Leith Walk.

When the diet was called counsel for the prisoner stated the following objections to the relevancy of the indictment: Failure to specify the amount received under the first charge; in the pawnbroking charges, no allegation that the security was inadequate; it should have been stated that the accused had no intention of repaying the loan, and, in all the charges, that the value of the documents was not equivalent to the sum obtained, and that loss had been sustained by those who gave money for them. Mr. Strachan, for the Crown, replied that false representation to induce payment of money was the crime charged. The genuineness of the documents was essential to the transaction, and there was a distinct averment that they were spurious and had been represented as genuine. His Lordship repelled the objections, the prisoner pleaded Not Guilty, a jury was empannelled, and the prosecutor adduced his proof.

The first witness was Andrew Brown. He stated that he became acquainted with the prisoner in 1886, when Smith brought him the album of autographs already mentioned. Some months later he bought from Smith certain Mar and Argyll documents, upon the representation that these had come from Mr. Ferrier's office. To verify the statement he called upon Mr. Ferrier, who said there were a lot of such things in his office which were of

no legal value, and that he did not know where Smith had ferreted out the other autographs, but he (Ferrier) might find it difficult to identify them and would leave them alone. After Mr. Ferrier's death witness continued to buy documents from Smith, as he found a ready sale for them. He sold to Mr. Buchanan in 1887 twenty-two of the documents produced, nine to Mr. Moir Bryce in 1887 or 1888, seven to Mr. Mackenzie in 1890, and others to various customers. He showed to purchasers a letter from Smith, dated 8th April, 1887, giving an account of how he came by the documents. He kept no record of his transactions with Smith, which lasted from 1886 to 1892. In November, 1887, having heard many stories about the authenticity of the MSS., he sent some of these to Chapman's Rooms for public sale, where the Duke of Argyll's agent claimed certain documents as the property of His Grace—which, by the way, were afterwards found to be forged and were accordingly destroyed. The prices obtained at the sale ran from ten to fifteen shillings. In cross-examination, Mr. Brown said he believed the pannel's statement as to the acquisition of the MSS., but he sold them without a guarantee. He declined to say what was his present opinion about the documents. If he had made a profit on them, his business as a whole had suffered by the transactions. The following letter was read

to witness, who admitted that he might have written it to Smith:

26th November, 1890.—If you could bring up anything more on the Covenanters or the Covenant; you spoke of a large thing you had; also items I am specially wanting—the following, as on other side, if you have them. You might please call to-night (Friday) at, say, quarter past seven.

Sanquhar Declaration and Testimony, 22nd June, 1680.

Do. Do. 28th May, 1685.

Hamilton Declaration, June, 1679.

Also the large parchment things you spoke of.

Also any important man.

Also Graham of Claverhouse.

And any other variety. If you drop a postcard I would get it, for fear I might be out.

Mr. Brown's faith in the richness of the Ferrier *trouvaille* was apparently as inexhaustible as that treasure itself.

The next witness, Mr. Buchanan, spoke to his purchase from Mr. Brown of some of the documents libelled. He paid £50 for them. "When did you discover they were bad?" asked the prisoner's counsel. "About five minutes after I bought them," was the reply. Mr. Moir Bryce and Mr. Mackenzie

gave similar evidence; they had paid Mr. Brown £70 and £50 respectively for MSS. bought from him. Mr. George Tait described the pawning of the MSS. by the prisoner. At the time he believed the documents genuine, but had his suspicions that Smith himself was spurious. These, however, were allayed on production by the latter of Mr. Ferrier's will, bequeathing to him as his nephew the whole of his valuable MSS. It seems superfluous to add that the will was forged. The documents pawned were sold as unredeemed pledges on 3rd April, 1890. Mr. George Thin deponed that he purchased certain lots at the sale for £12. He afterwards found these to be forgeries and handed them later to the Procurator-Fiscal. After further evidence as to the other pawnbroking charges, Mr. Chapman, auctioneer, stated that none of the documents libelled had been included in the Whitefoord Mackenzie sale in 1886, while Mr. Dowell gave similar evidence regarding the Gibson Craig sale in 1887, some of the MSS. purporting to have been bought at those sales.

Several other witnesses having been examined, one of whom stated that Mr. Stillie was too old and feeble to come to Court, Mr. G. F. Warner, assistant-keeper of MSS. in the British Museum, deponed that at the request of the Procurator-Fiscal he had inspected the documents produced in the case. His conclusion was that the whole were

spurious, and that they were all written by the same hand. They were of four classes: Burns, Scott, miscellaneous letters, and historical papers. The Burns MSS. were written upon paper such as Robert Burns never used. In some cases it had plainly been torn out of old books, in others, artificially tinted to give the appearance of age. All the signatures had been formed on one model. As to the Scott letters, these were folded in a different manner from that employed by Sir Walter, the paper was not such as he used, and the handwriting continually lapsed into that which appeared on the docquets. The handwriting of the miscellaneous letters was totally unlike that of the supposed writers. With regard to the historical documents, in some instances the dates were impossible, in all the imitation of the handwriting was bad, the signatures defective, and the paper of a different character from that used for official purposes. It being then seven o'clock the Court at this stage rose.

Next day, Tuesday, 27th June, on the resumption of the sitting, Mr. G. S. Inglis, expert in handwriting, was examined, who concurred in the evidence given by Mr. Warner. The handwriting of the docquets was, he said, unmistakably that of Smith. This closed the Crown case. For the defence, Miss Agnes Smith, sister to the prisoner, stated that in 1884 her brother showed her in Mr.

Ferrier's office a room, the floor of which was covered with documents and papers. She remembered him bringing a lot of papers home to their house in Albany Street. When they removed in the preceding September she burned a basketful of these, as she was destroying all the rubbish in the house. It is a pity that the lady's reforming zeal was satisfied with the sacrifice of a single basketful. J. H. Dobbie, gunner, Royal Artillery, said that he had lived with the prisoner for eighteen months, beginning in 1889. During that time he never saw Smith preparing spurious documents.

The evidence for the defence concluded, Mr. Strachan addressed the jury for the prosecution. With reference to the first charge, the question was, he said, whether the documents delivered by the accused to Mr. Brown were received by him on the strength of Smith's representation that they were genuine. He expressed surprise at the line taken by the defence, namely, that Mr. Brown himself knew that they were not genuine, of which there was no evidence. At an early stage of the transactions some doubts certainly were cast upon the authenticity of the MSS., and in order to test that Mr. Brown offered some of them to public sale at Chapman's, where they fetched good prices. There was, no doubt, a difference of opinion as to their being genuine, but Mr. Brown honestly be-

lieved in them and continued to do business with the accused on that footing till the very end. The defence insinuated that the letter from Mr. Brown, put in by the prisoner, was an order as from a merchant to a manufacturer, but its terms were explained by Mr. Brown's belief in the existence of a large collection of documents in Smith's hands. Mr. Brown paid throughout substantial prices for what he bought. With respect to the pawnbroking charges, the fraud was committed the moment Smith pledged the MSS., whether the pawnbrokers lost by advancing money on them or not. That all the documents produced were spurious and fabricated by the accused admitted of no doubt. The evidence of Mr. Warner, one of the greatest authorities, was on that point conclusive. He therefore asked for a verdict of guilty upon all the charges.

Mr. Dewar then addressed the jury for the defence. The Crown, he said, sought to prove that the accused had swindled four men. One, Brown, had been driven to admit that he had been a substantial gainer; the other three had in the box admitted that they made money out of Smith. The essence of the crime charged was that someone had been deceived and by that deception was induced to part with money. Did the jury believe that Brown was the injured innocent he pretended? If Mr. Buchanan, an amateur, speedily detected forgery, why

was it not equally apparent to Brown, who was in the trade? He was a very unsuspicious man when cross-examined, but not quite so simple when making a bargain—he stuck to the £50. After narrating the connection of Mr. Brown with the series of documents, counsel observed, "That is the man who says, 'I was a simple dupe for seven years!'" He ordered these manuscripts from Smith as he would order a pair of trousers or a sack of coals; the jury, however, would not make Smith the scapegoat. The pawnbroking charges were in an entirely different position, the witnesses being all perfectly reputable and honest men, who told the truth. Williamson took the documents on Stillie's representation that they were genuine, and Mullan took them as a speculation. If they afterwards became the innocent medium of deceiving the public, Smith was not charged with that, but with deceiving the pawnbrokers. In conclusion, counsel threw doubts upon the expert testimony, skilled witnesses as to handwriting being, he said, notoriously unreliable. Finally, he argued that no crime had been committed and no injury done to anybody, upon both of which grounds the accused was entitled to a verdict.

The Lord Justice-Clerk, in charging the jury, remarked upon the novel features of the case. With regard to its legal aspect, his Lordship said that if

the prisoner fabricated these documents for the purpose of selling them as of literary and historic interest to persons who bought them on his representation, that undoubtedly was a crime in the law of Scotland. The question was whether or not the documents were spurious. Counsel for the prisoner first argued that Brown knew that they were forgeries, and then contended that they were genuine; he could not have it both ways. As for the expert testimony, that evidence went much further than mere similarity of writing; apart altogether from comparison of handwriting there was the question of the paper used and the character of the contents. After reviewing the evidence upon these points, his Lordship observed that it was for the jury to say if even a plausible case had been made out that the prisoner got the documents from Mr. Ferrier's office. In respect to the first charge, if the prisoner's case was that Brown knew the documents were spurious, the prisoner himself must also have known. If the jury were satisfied that these two were concerned together in a fraudulent scheme, then, of course, the first charge must fall; but that would be a very strong step to take. It was more than judging of Brown's credibility if they found that he was a party to a criminal scheme. Even if they held that Brown, having at first believed the story, came to know later that

he was buying fictitious documents, they could convict the prisoner under that charge. As to the pawnbroking charges, if Mr. Tait advanced money to the prisoner relying upon the fictitious will of Mr. Ferrier, and if Williamson and Mullan respectively did so on false representations made to them by him regarding the documents, that was sufficient to entitle the jury to convict. Whether or not anyone had suffered loss by the prisoner's guilt, if proved, might be considered in awarding his punishment, but had no bearing upon the question which they had to determine. The crime was a very serious and uncommon one; if their deliberations led to a conviction his Lordship would consider any recommendation as to punishment which, as common-sense citizens, they might see fit to make.

The jury then retired, and after an interval of half an hour brought in a unanimous verdict of guilty on all the charges, but by a majority they recommended the prisoner to the leniency of the Court, on the grounds of the unusual character of the crime and the facility afforded him for disposing of spurious documents. The Lord Justice-Clerk said that in view of that recommendation he would abstain from pronouncing a sentence of penal servitude; and the prisoner, having been sentenced to imprisonment for twelve calendar months, was removed, and the Court rose.

This, professionally, was the end of "Antique" Smith; but the evil that men do lives after them—of the truth of which saying the present case is a palmary example. The forged manuscripts recovered and produced by the Crown were but the gleanings of the nefarious field in which for over seven years Smith had so discreditably laboured, and there is reason to fear that, as some at least of his literary tares must still survive among the genuine grain, unwary amateurs may yet be tempted to give their money for that which is not bread. The contemporary autograph collector—that badly burnt child—after the revelations of the trial naturally fought somewhat shy of Burns. But a new generation has arisen which knew not Joseph and his Edinburgh brethren; for such this narrative of the forgotten facts may, like the moral pocket handkerchiefs described by Mr. Stiggins, be found to combine amusement with instruction.

"Antique" Smith on the *Dispatch* Articles:

The following letter, addressed in the circumstances therein mentioned to James Cameron, an Edinburgh antiquarian bookseller, by "Antique" Smith some years after his release from prison, containing an admission of guilt, and showing the writer unchastened by punishment and exposure, is printed from the original MS. in my possession:

26 George Street,
Edinburgh, 20*th November*, 1905.

James Cameron, Esq.,
South St. David Street.

Dear Sir,—With reference to our recent conversation on the Articles which appeared in the *Dispatch* and *Scotsman* Newspapers some years ago, relating to Historical MSS., and of which I believe you have formed a collection, allow me to mention that through a lot of balderdash there percolates a *soupçon* of truth; but I really never at any time took the trouble of even reading or studying them, after the first or second issues. I left the result to the Laws of Nature, and did not deem it necessary to answer any of them in public print; but all the facsimiles, so far as I recollect, were my own workmanship—a fact I do not and did not deny. I hope, in reading the lucubrations, you will not hold me in any way responsible for the various wonderful theories propounded by some of the writers. They are simply romance, so far as I was concerned.—Yours truly, A. H. Smith.

For "Laws of Nature" we should perhaps read those of Scotland; "facsimiles" is a pleasant euphemism for forgeries.

END OF VOLUME ONE